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NATIONAL ASSOCIATION  
OF  
RAILWAY COMMISSIONERS  

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PROCEEDINGS  
OF THE  
TWENTY-EIGHTH ANNUAL CONVENTION  
HELD AT  
WASHINGTON, D. C.  
NOVEMBER 14-17, 1916

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BUSINESS ADMINISTRATION











NATIONAL ASSOCIATION  
OF  
railroad and utilities  
(RAILWAY) COMMISSIONERS

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PROCEEDINGS  
OF THE  
TWENTY-EIGHTH ANNUAL CONVENTION  
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BUSINESS ADMINISTRATION.  
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# ORGANIZATION OF CONVENTION

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## OFFICERS AND COMMITTEES FOR THIS CONVENTION

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### OFFICERS.

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ROBERT R. PRENTIS,  
of Virginia, President.  
MAX THELEN, of California,  
First Vice-President.  
EDWARD C. NILES,  
of New Hampshire,  
Second Vice-President

WILLIAM H. CONNOLLY,  
of Washington, D. C.,  
Secretary.  
JAMES B. WALKER,  
of New York,  
Assistant Secretary.

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### COMMITTEES.

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#### NO. 1 EXECUTIVE COMMITTEE.

Elmquist, Charles E., of Minnesota, Chairman.

Richards, John G., of South Carolina. Prentis, Robert R., of Virginia, Ex-  
Thorne, Clifford, of Iowa. Officio.  
Bristow, J. L., of Kansas. Connolly, William H., of Washington,  
Candler, Charles M., of Georgia. D. C., Ex-Officio.

#### NO. 2 STEAM RAILROAD COMMITTEES.

##### EXPRESS AND OTHER CONTRACT CARRIERS BY RAIL

Irvine, Frank, of New York, 2nd Dist., Chairman.

Thelen, Max, of California. Webster, J. Prince, of Georgia.  
Morley, E. A., of Montana. Daniels, Winthrop M., of the I. C. C.  
Jacobson, O. P. B., of Minnesota. Wingfield, J. Richard, of Virginia.

#### NO. 3 SAFETY OF RAILROAD OPERATION.

McChord, Charles C., of the I. C. C., Chairman.

Dunn, Royal C., of Florida. Sheppard, F. M., of Mississippi  
Owen, O. L. of New Mexico. Jackson, Carl D., of Wisconsin.  
Scott, D'Arcy, of Ontario, Canada. Ainey, William D. B., of Pennsylvania.

#### NO. 4 RAILROAD SERVICE, ACCOMMODATIONS, AND CLAIMS.

Niles, Edward C., of New Hampshire, Chairman.

Funk, Frank H., of Illinois. Blitch, Newton A., of Florida.  
Miller, Frank J., of Oregon. Shealy, Frank W., of South Carolina.  
Rhea, William F., of Virginia. Kendrick, John B., of Wyoming.

#### NO. 5 GRADE CROSSINGS AND TRESPASSING ON RAILROADS.

Duncan, Thos., of Indiana, Chairman.

Hampton, G. McDuffie, of So. Carolina. Jones, F. A., of Arizona.  
Taylor, Shelby M., of Louisiana. Gordon, Alex., of California.  
Wilson, J. H., of Iowa. Walker, James B., of New York, 1st  
Dist.

## NO. 6

## RAILROAD RATES.

Stutsman, W. H., of North Dakota, Chairman.

Travis, Edward L., of North Carolina.	Cleaves, Benjamin F., of Maine.
Mayfield, Earle B., of Texas.	Hillyer, George, of Georgia.
Hale, John H., of Connecticut.	Hemans, Lawton T., of Michigan.

## NO. 7 STATISTICS AND ACCOUNTS OF RAILROAD COMPANIES.

Meyer, Balthasar H., of the I. C. C., Chairman.

Gray, James F., of Georgia.	Hasbrouck, H. C., of New York, 2nd District.
Yapp, Thos., of Minnesota.	
Powell, U. G., of Nebraska.	Meyers, William J., Statistician of the I. C. C.
Sturgis, C. I., of Am. Ry. Acct'g Officers Assn.	

## NO. 8

## CAR SERVICE AND DEMURRAGE.

Burr, R. Hudson, of Florida, Chairman.

Busby, William G., of Missouri.	Niles, Edward C., of New Hampshire.
Perry, James A., of Georgia.	McCormick, J. E., of Montana.
Spinning, F. R., of Washington.	Enloe, B. A., of Tennessee.

## OTHER PUBLIC UTILITIES.

(Electric railway, telephone, telegraph, gas, electric and water companies and other utilities.)

## NO. 9

## PUBLIC UTILITY RATES.

Worthen, Thos. W. D., of New Hampshire, Chairman.

Aylesworth, M. H., of Colorado.	Kutz, Major Chas. W., of Washington, D. C.
Bacon, Robert C., of Vermont.	Love, J. E., of Oklahoma.
Treacy, John J., of New Jersey.	Devlin, Frank R., of California.

## NO. 10

## SERVICE OF PUBLIC UTILITY COMPANIES.

Yates, Richard, of Illinois, Chairman.

Russell, Charles A., of Massachusetts.	Shaw, Howard B., of Missouri.
Kinkel, John M., of Kansas.	Whitney, Travis H., of New York, 1st Dist.
Hall, J. H., of Montana.	Blaine, E. F., of Washington.

## NO. 11.

## SAFETY OF OPERATION OF PUBLIC UTILITY COMPANIES.

Carr, James O., of New York, 2nd Dist., Chairman.

Loveland, H. D., of California.	Donges, Ralph W. E., of New Jersey.
Foley, C. F., of Kansas.	Towers, Albert G., of Maryland.
Kendall, Sheridan S., of Colorado.	Ramstedt, A. P., of Idaho.

## NO. 12

## STATISTICS AND ACCOUNTS OF PUBLIC UTILITY COMPANIES.

Weber, Adna F., Chief Statistician, of 1st Dist., New York, Chairman.

Lewis, Arthur A., of Washington.	Williams, J. G., Statistician of Dist. of Columbia.
Eastman, Joseph B., of Massachusetts.	Lyon, Henry S., Statistician of New Jersey.
Waltemire, Beecher W., of Ohio.	Murphy, M. J., Statistician of Illinois.

NO. 13

GENERAL

VALUATION.

Elmqvist, Charles E., of Minnesota, Chairman.

Aitchison, Clyde B., of Oregon.

Henshaw, George A., of Oklahoma.

Thelen, Max, of California.

Niles, Edward C., of New Hampshire.

Bristow, J. L., of Kansas.

Shaw, Walter A., of Illinois.

NO. 14 CAPITALIZATION AND INTERCORPORATE RELATIONS.

Edgerton, Edwin, C., of California, Chairman.

Aitchison, Clyde B., of Oregon.

Trammell, Paul B., of Georgia.

Clements, Judson C., of the I. C. C.

Morgan, E. F., of West Virginia.

Shaughnessy, J. F., of Nevada.

Bliss, William C., of Rhode Island.

NO. 15

STATE AND FEDERAL LEGISLATION.

Finn, Laurence B., of Kentucky, Chairman.

Thorne, Clifford, of Iowa.

Clarke, Henry T., Jr., of Nebraska.

Bartine, H. F. of Nevada.

Northcott, Elliott, of West Virginia.

Dougherty, P. W., of South Dakota.

Harlan, James S., of the I. C. C.

No. 16

PUBLICATION OF COMMISSIONS' DECISIONS.

Decker, Martin S., of New York, Chairman.

Thompson, Owen P., of Illinois.

Mills, Ira B., of Minnesota.

Finn, Laurence B., of Kentucky.

Higgins, Richard T., of Connecticut.

Pell, Geo. P., of North Carolina.

Hughes, Oliver H., of Ohio.

MEMBERS IN ATTENDANCE.

(See pages 8 to 10 of proceedings.)

TIME AND PLACE OF NEXT ANNUAL MEETING.

Washington, D. C., Tuesday, October 16, 1917, 10 o'clock A. M.



#### IV NATIONAL ASSOCIATION OF RAILWAY COMMISSIONERS.

##### STANDING COMMITTEES FOR 1917.

(Reports to be printed should be in the hands of the Secretary  
by August 16, 1917)

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##### EXECUTIVE COMMITTEE.

Charles E. Elmquist, of Minnesota, Chairman.

Candler, C. M., of Georgia.	Yates, Richard, of Illinois.
Love, J. E., of Oklahoma.	Thelen, Max, of California, ex-officio.
Whitney, Travis H., of New York, First District.	Walker, James B., Secretary, of New York, First District, ex-officio.

##### EXPRESS AND OTHER CONTRACT CARRIERS BY RAIL.

J. Prince Webster, Rate Expert, of Georgia, Chairman.

Brecht, M. J., of Pennsylvania.	Kinkel, John M., of Kansas.
Dougherty, P. W., of South Dakota.	Schreiber, C. E., Statistician of Wis- consin.
Jacobson, O. P. B., of Minnesota.	Travis, E. L., of North Carolina.

##### SAFETY OF RAILROAD OPERATION.

C. C. McChord, Interstate Commerce Commission. Chairman.

Bliss, W. C., of Rhode Island.	Hillyer, George, of Georgia.
Bridges, B. A., of Louisiana.	Hodge, H. W., of New York, First District.
Groves, M. S., of New Mexico.	Sheppard, F. M., of Mississippi.

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Annual Convention, 1917, will be held in Washington, D. C., beginning  
October 16.

##### RAILROAD SERVICE, ACCOMMODATIONS AND CLAIMS.

Walter Alexander, of Wisconsin, Chairman.

Bradley, George T., of Colorado.	Cunningham, Charles S., of Michigan.
Enloe, B. A., of Tennessee.	Perry, James A., of Georgia.
Garnett, C. B., of Virginia.	Shealy, F. W., of South Carolina.

##### GRADE CROSSINGS AND TRESPASSING ON RAILROADS.

James B. Walker, Secretary, New York, First District, Chairman.

Bacon, R. C., of Vermont.	Miller, F. J., of Oregon.
Elwell, C. C., of Connecticut.	Richards, John G., of South Carolina.
Gordon, Alex., of California.	Waltermire, B. W., of Ohio.

##### RAILROAD RATES.

A. E. Helm, Commerce Counsel, of Kansas, Chairman.

Bee, C. B., Rate Expert, of Missouri.	Jones, F. A., of Arizona.
Calderhead, O. O., Rate Expert, of Washington.	Loveland, H. D., of California.
Powell, U. G., Rate Expert, of Nebraska.	Shaughnessy, J. F., of Nevada.

**STATISTICS AND ACCOUNTS OF RAILROAD COMPANIES.**

Arthur A. Lewis, of Washington, Chairman.

Lyon, Henry S., Statistician, of New Jersey.	Powell, U. G., Rate Expert, of Nebraska.
Meyers, Wm. J., Statistician, of Interstate Commerce Commission.	Sturgis, C. I., of American Railway Accounting Officers Association.
Warren, H. B., Statistician, of Minnesota.	

**CAR SERVICE AND DEMURRAGE.**

Frank H. Funk, of Illinois, Chairman.

Aylesworth, M. H. of Colorado.	Jacobson, O. P. B., of Minnesota.
Dunn, Royal C., of Florida.	Lewis, Arthur A., Washington.
Higgins, R. T., of Connecticut.	Taylor, H. G., Nebraska.

**PUBLIC UTILITY RATES.**

Thomas W. D. Worthen, of New Hampshire, Chairman.

Corr, Edwin., of Indiana.	Ramstedt, A. P., of Idaho.
Glasgow, C. L., of Michigan.	Ryan, M. J., of Pennsylvania.
Morgan, E. F., of West Virginia.	Walker, E. H., Secretary, of Nevada.

**SERVICE OF PUBLIC UTILITY COMPANIES.**

M. H. Aylesworth, of Colorado, Chairman.

Clark, James L., of Indiana.	Lewenberg, S., of Massachusetts
Floyd, H. A., Secretary, of Wyoming.	Board of Gas and Electric Light Commissioners.
Hall, J. H., of Montana.	Murphy, J. J., of South Dakota.
Humphrey, W. D., of Oklahoma.	

**SAFETY OF OPERATION OF PUBLIC UTILITY COMPANIES.**

Frank R. Devlin, of California, Chairman.

Cleaves, B. F., of Maine.	Morley, E. A., of Montana.
Corey, H. H., of Oregon.	Simmons, W. H., of Nevada.
Graham, John W., of Idaho.	Slocum, J. W., of New Jersey.

**STATISTICS AND ACCOUNTS OF PUBLIC UTILITY COMPANIES.**

James O. Carr, of New York, Second District, Chairman.

Miller, H. H., Accountant, of Idaho.	Timm, Walter H., Clerk, of New Hampshire.
Murphy, M. J., Statistician, of Illinois.	Weber, Adna F., Statistician, of New York, First District.
Reynolds, L. R., Auditor, of California.	
Hasbrouck, H. C., Statistician, of New York, Second District.	

**VALUATION.**

Charles E. Elmquist, of Minnesota, Chairman.

Aitchison, C. B., of Oregon.	Shaw, Walter A., of Illinois.
Bristow, Joseph L., of Kansas.	Taylor, H. G., of Nebraska.
Eastman, Joseph B., of Massachusetts.	Thelen, Max, of California, ex-officio.
Niles, E. C., of New Hampshire.	

**CAPITALIZATION AND INTERCORPORATE RELATIONS.**

Alonzo R. Weed, Massachusetts Board of Gas and Electric Light  
Commissioners, Chairman.

Clements, Judson C., of Interstate Commerce Commission.	Macleod, F. J., of Massachusetts. Mayfield, A., of Texas.
Donges, R. W. E., of New Jersey.	Towers, A. G., of Maryland.
Emmet, W. T., of New York, Second District.	

**STATE AND FEDERAL LEGISLATION.**

Joseph L. Bristow of Kansas, Chairman.

Busby, W. G., of Missouri.	Niles, E. C., of New Hampshire.
Candler, C. M., of Georgia.	Thompson, O. P., of Illinois.
Finn, L. B., of Kentucky.	Thelen, Max. of California, ex-of- ficio.
Jackson, Carl D., of Wisconsin.	

**PUBLICATION OF COMMISSIONS' DECISIONS.**

Ledyard P. Hale, Counsel, of New York, Second District, Chairman.

Brookman, Douglas, Attorney, or California.	Whitney, Travis H., of New York, First District.
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**SPECIAL COMMITTEE.****PUBLIC OWNERSHIP AND OPERATION.**

E. O. Edgerton, of California, Chairman

Bartine, H. F., of Nevada.	Jackson, Carl D., of Wisconsin
Foley, C. F., of Kansas.	Hayward, William, of New York
Guiher, John, of Iowa.	First District
Taylor, Shelby, of Louisiana.	

## **PROCEEDINGS OF THE CONVENTION.**

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HEARING ROOM OF THE INTERSTATE COMMERCE COMMISSION,

*Washington, D. C., November 14, 1916, 10:30 a. m.*

The Convention was called to order by the President, Robert R. Prentiss, of Virginia, with William H. Connolly as Secretary.

THE PRESIDENT. We are here in this room this morning as the guests of the Interstate Commerce Commission, and at my request the Chairman of the Interstate Commerce Commission, Dr. Meyer, has consented to address us.

Dr. Meyer is one of those gentlemen who left the professor's chair to engage in public work. These college men seem to be pushing us considerably at this period of our history. (Applause). He went to the Wisconsin Commission, and so commended himself to the then President of the United States that a few years ago he was appointed to the Interstate Commerce Commission. He will interest us because of his learning. He will speak pleasantly to us because we are his guests, and we are going to listen to him with pleasure and profit, because he is Dr. Meyer. (Applause).

### **ADDRESS OF HONORABLE B. H. MEYER, CHAIRMAN OF THE INTERSTATE COMMERCE COMMISSION.**

CHAIRMAN MEYER: Mr. President and gentlemen, the First Annual Convention of Railroad Commissioners met in another room of this building on the 5th of March, 1889. I hold in my hand a little volume that contains the proceedings of that Convention. I see before me one face that, according to this record, could have been seen on that occasion, and that gentleman is not yet an old man. That general conference was called by the first chairman of the Interstate Commerce Commission, on behalf of the entire Commission, and was designated a "general conference of Railroad commissioners." The name, National Association of Railway Commissioners, was not adopted until 1901, the year of the adoption of a constitution. Representatives of state railroad commissions from those states which then had commissions, twenty-eight in number, were brought together on invitation of the Interstate Commerce Commission. The first chairman of the Interstate Commerce Commission opened the session of that general conference; and because he did so and his successors did so at succeeding meetings,

I am here to open this twenty-eighth annual convention. It gives me great pleasure, Mr. President, to be permitted to present my little contribution toward the continuance of the custom of having the chairman of the Interstate Commerce Commission offer these preliminary remarks. On behalf of the Interstate Commerce Commission I extend to you our most cordial greetings, with the hope that this meeting may be profitable and enjoyable. I am confident that each and every member of the association will contribute to the full extent of his ability toward making these sessions of great value to all of us. Please command us if we can be of any assistance. (Applause.)

Mr. President, having bade you welcome in the name of the entire Commission, personally and officially, with your permission I will now proceed to offer a few remarks in my individual capacity. I am not advised with respect to the extent to which all of my colleagues share in the views that I may express, in so far as I may enter upon an expression of views regarding matters relating to the general subject of regulation.

The first volume of your proceedings contained 152 pages. The low tide was reached in 1902, when the proceedings covered only 61 pages. That must have been during the height of the junketing type of convention. The proceedings for the first ten years aggregate 1,291 pages, while the proceedings for the last ten years aggregate 3,737 pages. Your work and ours has increased in the same or a greater ratio than is shown by this increase in the number of pages of these proceedings. The ratio of the increase in the quality of the work of state commissions has been greater than the ratio of increase in the number of pages of these proceedings. At the conclusion of the first convention the chairman of the Interstate Commerce Commission stated to those assembled that the Commission was occupying three floors of this building in which we now are, and he thought that the state commissions would find something of interest on each of these floors. I believe, gentlemen, you will find something of interest now on each of these floors, but you will have to visit many more floors, for the Commission occupies today with all its divisions in this and in other buildings exactly ten times as many square feet of floor space as it did then, and its work is probably several hundred times in volume what it was then. There are state commissions represented here whose work has doubtless increased with the same rapidity. You can remember the time when the members of your commission, with perhaps the aid of a secretary and a clerk, could do all the work, while now you have an elaborate organization and many employes, and find it as necessary to extend your eyes and ears and hands through others, as we do.

The call for the first general conference enumerated four subjects to be considered at such conference. The first was "Railway

Statistics, with Especial Reference to the Formulation of a Uniform System of Reporting." The uniform system of reporting, as you all know, was accomplished eight years ago, but many problems of railway statistics are still with us. The second was "Classification of Freight, its Simplification and Unification." That subject too is still here. There has been some simplification and some unification, but much of that work still lies in the future. Uniformity in rating has had only an accidental beginning. The third was "Railway Legislation, How to Obtain Harmony in." Much has been accomplished along these lines, largely through the efforts of this convention, but the work of harmonizing will doubtless have to continue as long as the work of regulation endures. The fourth and last subject was "Railway Construction, should regulation be provided?" Generally speaking, nothing has been done under this head so far as federal legislation is concerned. The committee which was appointed at the opening of that conference adopted these four suggested subjects as the first part of its program, and added heating and lighting of cars, automatic car coupling, continuous train brakes, and railway taxation. Great progress has been made along these and allied lines during the intervening years; yet much remains to be done.

Since the first meeting in 1889 this convention has grown from a body representing twenty-eight state commissions to a body representing forty-seven commissions. Corresponding to the four subjects enumerated in the original call you now have sixteen standing committees, each devoted to an important branch of the work of regulation. While some of these committees are very properly still devoting their energies to the original subjects, others are and have been at work on such subjects as demurrage, capitalization, rates, telephone and telegraph, express companies, valuation, etc. The activities of this association have steadily expanded with the growing activities of state commissions.

The act to regulate commerce was signed by the President February 4, 1887. It was the result of years of agitation and deliberation. Before there was a committee on Interstate Commerce in the Senate, and a committee on Interstate and Foreign Commerce in the House of Representatives, the problems in interstate commerce by railway had been receiving the attention of various Congressional committees, notably that on Canals, and a series of committee reports dealing with railway matters may be found in the records of Congress prior to 1870.

After 1870 things moved fast, and a succession of committee reports on railway affairs associated with the names of Reagan, Windom and Cullom mark the progress in Congressional activity in railway matters. The report of the Cullom committee in 1886, and the debates following, constitute the final effort in the enactment of the law under which this Commission has been working ever since.

While during the years between 1887 and 1906 various amendments to the act, generally following more or less testimony before the respective committees of the two houses of Congress, were adopted, no general survey of the entire field was made by a congressional committee until the Senate committee held its extensive hearings in 1905, and published the testimony and documents submitted for its consideration. The work of that Senate committee, together with the Congressional debates following it, constituted the basis of the epoch-making legislation of 1906, which transformed the Interstate Commerce Commission from a body comparable to the Congress under the Articles of Confederation, which could recommend everything and do nothing, to a body with power to give vitality to the act.

In making this brief historical survey of the growth and development of federal regulation, we are impressed with the value of the work of these special committees which investigated transportation conditions in the past. I, therefore, heartily welcome the Congressional investigation which is about to begin. There are times when it is most wise for men to pause and look back at the road over which they have traveled, to look about them with circumspection to see just what their bearings are, and with compass in hand to look toward the future and to correlate the past, the present, and the future. This Congressional inquiry may serve us, who are engaged in this work of regulation, and all those who are affected by that work, as an inventory serves a merchant. We can perform no greater service than to lay before that committee, and through that committee before Congress, our best ideas on this subject. The subject of regulation is too big for any one man or any small number of men. It requires the active cooperation and wisdom of all men who are qualified by study and experience to participate in moulding the work of regulation.

In the beginning railway regulation meant almost exclusively the regulation of rates. Little by little other parts of the field of regulation were covered by legislation extending the jurisdiction of commissions. In a few states the regulating statutes are now practically as big as the business. Looking at the country, as a whole, however, the activities of the railway business extend far beyond the scope of the regulating statutes relating thereto. Many parts of the field still remain to be covered. It was very natural that great emphasis should have been laid on rate problems during the early decades, but it is possible that this emphasis has resulted in obscuring somewhat the vision of the whole field, and in preventing that symmetry in legislation which our national interests demand. Men may argue, as they have argued, that rates, for instance, have no connection with capitalization, wages, etc. Whether we agree with such arguments, or disagree, we can doubtless secure universal assent to the proposition that rates have a connection with pocketbooks—the pocketbooks of the users of

railways, as well as the pocketbooks of their owners. Because of this connection between rates and pocketbooks, the rate question will always be an important one. However, whether or not a shipper shall pay, or a railroad receive, 10 cents or 10½ cents for the transportation of a certain commodity between certain points, is of relatively minor significance, compared with the operation of this country-wide transportation machine in the most efficient, economical and beneficial manner in the interests of the whole country.

Take the problem of terminals, of which we have heard so much in recent times. It is important that provision should be made for the construction of these terminals; but it is equally important that fair and just terms for the use of these terminals, in the interests of the whole public, including all the railroads, shall be established. The distribution of terminals to a certain extent determines the distribution of industries in our cities; the distribution of industries influences the distribution of the population; the distribution of the population determines to a large extent the living conditions of that population, which in turn has a vital effect on the character of that population. Great social and political interests are thus tied up with this problem of terminals, in addition to the very vital relation of terminals to the conduct of transportation itself. This is only one of a number of important matters connected with the operation of railways, that merit more consideration in the future than they have received in the past.

Again, if we look at the methods of procedure under regulating statutes before commissions, may we not find things there which require modification? Let me give one illustration. Men who hear testimony and arguments on the issues in rate questions as they pass before them in constant procession, year after year, become so familiar with such issues that after complaint and answer have been filed it is quite possible to outline in a general way, in advance of a hearing, the character of the testimony which will probably be submitted. In proceedings in which such is the case, why should it be necessary to continue to hold formal hearings, file briefs, deliver arguments, and prepare formal reports before an order can be issued? Why should not the law permit the issuance of orders without a previous hearing, within the discretion of the Commission, either upon complaint or upon its own initiative? I am suggesting nothing arbitrary. I do not intimate that anybody, shipper or carrier, shall be denied a full hearing. An order issued without a previous hearing should recite the supporting and justifying reasons in such detail that the interested parties may know upon what state of fact or assumed fact the order was issued; and then, if after the issuance of the order either party takes exception to the whole or a part of such order, a hearing might be requested and the issues tried out in the same manner that they are now being tried.



I believe that in this way a great deal of time and money could be saved, alike to the shippers and to the railroads.

Mr. President, your letter of last summer, kindly inviting me to be present on this occasion, courteously suggested that if I felt so inclined and cared to do so, you would like to have me say something with respect to the relation between the state and interstate commissions. I believe, with you, that our common work requires the fullest co-operation between us. Our work, our aims and our purposes are one. At this moment, and in this presence, it is probably impossible to say a word on the subject of co-operation between the state and interstate commissions without suggesting the name "Shreveport." Before 1906, when the Interstate Commerce Commission was without authority to prescribe rates for the future, it was practically impossible for conflicts to arise out of Shreveport situations, and the situations themselves were perhaps relatively rare. Since that time both state commissions and the interstate commission have become active in rate matters, and Shreveport situations could not possibly have been avoided under existing methods of procedure and in the present state of the law.

As you all know, there are some state rates and interstate rates that have little or no relation to one another. There are also state rates and interstate rates, like those in the original Shreveport case, which are so closely related that they must be one if unjust discriminations shall be avoided. The establishment of this one rate, just and reasonable, is the problem in every case involving the principle of the Shreveport case. Two, three, or four different commissions working at the same time, and independently of one another, to establish a rate on the same commodity in the same territory, crossed by state lines, can not be expected to arrive at identical conclusions under our present method of procedure.

Before I proceed farther with respect to Shreveport situations, let me remind you that the Interstate Commerce Commission has never reached out in any manner whatsoever with a view of seizing upon Shreveport situations and exercising its authority in adjusting such rates. The complaint in the original Shreveport case was brought by one of the states in the Union, possessed of as many sovereign rights as any other state, responsive to a special enactment of its legislature. Subsequent complaints, originating in widely separated states, about one hundred in all up to date, were filed by municipalities, organizations of business men, corporations, and individuals, all of them parties who have a perfect right under the law to bring such complaints. These complaints having been filed, it was the plain duty of the Commission to which I belong to proceed with them in the regular way, and in the same manner in which other cases are disposed of. This we have done to the best of our ability, in accordance with law and in obedience to our oath of office.

From my point of view, Shreveport situations are primarily rate questions, and not questions of constitutional limitations and statutory powers in administration. If you and we will sit down together solely with the view of working out Shreveport rate problems, forgetting for the time being all the controversies about sovereignty, constitutional and legislative power, I believe that in every instance it will be possible for us to arrive at a satisfactory and just result. In fact, the more we debate the forms of government and the relations of the states to the federal government in Shreveport cases—please observe that I am using the word Shreveport in a generic sense; future dictionaries will be compelled to define it—the more we are likely to obscure the practical rate problems in which you and we are jointly interested, and which present the questions of vital concern to the citizens of the respective states. Our citizens are interested in getting this work done. They care little about the agency through which it is done. Your problem and ours, and that of Congress is, given this peculiar kind of work, through what agencies can it be accomplished most advantageously, with justice to all? In the original Shreveport case the Interstate Commerce Commission had the assistance of the authorities of one of the states directly interested, in addition to other parties of record in the case, but we did not have the assistance of the authorities of the other state involved. In similar cases involving the Shreveport principle we have had the most effective and faithful co-operation from members of the state commissions directly concerned. However, that co-operation was entirely voluntary, and without status under the act to regulate commerce.

This leads me, Mr. President, to suggest what I firmly believe to be a promising step in the direction of progress in railway regulation; namely in Shreveport cases to provide by law for the co-operation of the state commissions and the Interstate Commerce Commission, and thus to give our joint and co-operative efforts a definite legal status. Under a plan such as I have in mind, when a case involving the Shreveport principle arises, the resulting investigation would be conducted jointly by the state commissions and the Interstate Commerce Commission. Every state commission directly involved would be given an opportunity, in accordance with law, to participate in the deliberations and to assist in formulating the final conclusions upon a record jointly made. The one rate within the zone of reasonableness, established through the joint efforts of the respective commissions, would then apply to all business, state and interstate, and thereafter there could be no Shreveport case in that territory and with respect to that commodity. .

While in my own mind the details of the plan which I have suggested are fairly clear and appear to me to be practicable, you may see difficulties of which I have not thought. I shall not attempt at this time to discuss the details, but leave you with this general suggestion of providing a legal basis for co-operation between the state

commissions and the Interstate Commerce Commission in all proceedings involving the principle of the Shreveport case.

Mr. President, in the opening of my remarks I stated that what I might say would be said in a personal way, and not in my representative capacity as chairman of the Interstate Commerce Commission. With respect to this one suggestion, however, that of providing a status by law for co-operation between the state commissions and the Interstate Commerce Commission, I am happy to be able to say that I speak not only for myself, but in an official capacity for the Interstate Commerce Commission.

Mr. President, if these suggestions may be received as a compliance with your request, I shall be glad. Once more I extend to you all our hand of fellowship and welcome you to our beautiful national capital. (Applause.)

The PRESIDENT. We appreciate the presence of the Chairman of the Interstate Commerce Commission, and his words of kindness and wisdom.

The SECRETARY will call the roll of states.

### MEMBERS IN ATTENDANCE.

The SECRETARY called the roll, and the following were present:

Arizona Corporation Commission: F. A. Jones (Chairman) and W. N. Sangster (Secretary-Auditor).

California Railroad Commission: Max Thelen (President) and Edwin O. Edgerton (Commissioner).

Colorado Public Utilities Commission: M. H. Aylesworth (Chairman), Sheridan S. Kendall (Commissioner) and George T. Bradley (Commissioner).

Connecticut Public Utilities Commission: Richard T. Higgins (Chairman), John H. Hale (Commissioner) and Charles C. Elwell (Commissioner).

Florida Railroad Commission: Royal C. Dunn (Commissioner), D. C. McMullin (Counsel), and J. H. Tench (Rate Expert).

Georgia Railroad Commission: Charles Murphy Candler (Chairman), Paul B. Trammell (Commissioner), James A. Perry (Commissioner) and J. Prince Webster (Rate Expert).

Illinois Public Utilities Commission: Frank H. Funk (Commissioner), Owen P. Thompson (Commissioner), Walter A. Shaw (Commissioner), Richard Yates (Commissioner) and J. H. Prior (Chief Engineer).

Indiana Public Service Commission: Thomas Duncan (Chairman).

Iowa Board of Railroad Commissioners: Clifford Thorne (Chairman), J. H. Wilson (Commissioner) and John A. Guiher (Commissioner).

Kansas Public Utilities Commission: Joseph L. Bristow

(Chairman), John M. Kinkel (Commissioner) and C. F. Foley (Commissioner).

Kentucky Railroad Commission: Laurence B. Finn (Chairman).

Massachusetts Public Service Commission: Fred J. Macleod (Chairman), Joseph B. Eastman (Commissioner) and Henry W. Hayes (Engineer).

Minnesota Railroad and Warehouse Commissioners: Ira B. Mills (Chairman), Chas. E. Elmquist (Commissioner), O. P. B. Jacobson (Commissioner) and Thos. Yapp (Assistant Secretary).

Missouri Public Service Commission: Howard B. Shaw (Commissioner).

Nebraska State Railway Commission: H. T. Clarke, Jr. (Chairman), Thomas L. Hall (Commissioner), H. G. Taylor (Commissioner), T. A. Browne (Secretary), U. G. Powell (Rate Expert).

New Hampshire Public Service Commission: Edward C. Niles (Chairman), Thomas W. D. Worthen (Commissioner) and William T. Gunnison (Commissioner).

New Mexico Corporation Commission: Matthew S. Groves (Chairman), Oscar L. Owen (Commissioner).

New York Public Service Commission (1st District): William Hayward (Commissioner), Travis H. Whitney (Commissioner), James B. Walker (Secretary) and Adna F. Weber (Statistician).

(2nd District): William Temple Emmet (Commissioner), James O. Carr (Commissioner) and H. C. Hasbrouck (Statistician).

North Carolina Corporation Commission: Edward L. Travis (Chairman), William T. Lee (Commissioner) and Geo. P. Pell (Commissioner).

North Dakota Commissioners of Railroads: W. H. Stutsman (President), O. P. N. Anderson (Commissioner), W. F. Cushing (Secretary) and J. A. Little (Statistician).

Oklahoma Corporation Commission: J. E. Love (Chairman).

Oregon Public Service Commission: Hylen H. Corey (Commissioner).

Pennsylvania Public Service Commission: F. Herbert Snow (Chief Engineer).

South Carolina Railroad Commission: G. McD. Hampton (Chairman), John G. Richards (Commissioner) and Frank W. Shealy (Commissioner).

South Dakota Board of Railroad Commissioners: J. J. Murphy (Chairman) and P. W. Dougherty (Vice-Chairman).

Texas Railroad Commission: Allison Mayfield (Chairman).

Virginia State Corporation Commission: Robert R. Prentis (Chairman).

Washington Public Service Commission: Arthur A. Lewis (Commissioner).

West Virginia Public Service Commission: E. F. Morgan (Chairman), E. G. Rider (Commissioner).

Wisconsin Railroad Commission: Carl D. Jackson (Commissioner) and Walter Alexander (Commissioner).

Wyoming Public Service Commission: Robert B. Forsyth, State Auditor (Vice-Chairman) and H. A. Floyd (Secretary).

Interstate Commerce Commission: Balthasar H. Meyer (Chairman), Judson C. Clements (Commissioner), Edgar E. Clark (Commissioner), Henry C. Hall (Commissioner), George B. McGinty (Secretary) and Alfred Holmead.

Clyde B. Aitchison, Counsel to Valuation Committee.

William H. Connolly, Secretary of the Association.

Association of American Railway Accounting Officers: C. I. Sturgis (General Auditor, C., B. & Q.), J. A. Taylor (Compt., Central R. R. of New Jersey).

American Electric Railway Accountants' Association: W. F. Ham (V. P. and Compt., Washington Ry. & Electric Co.), C. S. Mitchell (Compt., Pittsburg Rys. Co).

United States Independent Telephone Association. (Acctg. Section): C. Y. McVey (President of Association), C. A. Bennett, Kansas City, Mo., and F. B. MacKinnon (Vice-President of Association).

National Electric Light Association. (Accounting Section): H. M. Edwards.

## REPORT OF EXECUTIVE COMMITTEE.

THE PRESIDENT: Next in order is the report of the Executive Committee.

MR. THORNE OF IOWA: The Executive Committee presents the following report. I will say that I am reading this in the absence of Mr. Elmquist, the Chairman of the Committee:

The Executive Committee presents the following report:—

We recommend the following Rules for this Convention;

Unless otherwise specially determined the Convention shall meet each day at 10 A. M. and continue in session until 5:00 P. M., subject to motion for recess.

## ORDER OF BUSINESS.

Address of Welcome, by Hon. Balthasar H. Meyer, Chairman, Interstate Commerce Commission.

1. Report of the Executive Committee, Address by the President.

The Committees shall report in the following order:

2. State and Federal Legislation.
3. Express and other contract Carriers by rail.
4. Safety of railroad operation.
5. Railroad service, accommodations, and claims.
6. Grade crossings and trespassing on railroads.
7. Railroad rates.
8. Statistics and accounts of railroad companies.
9. Car service and demurrage.
10. Public Utilities Rates.
11. Service of Public Utilities.
12. Safety of operation of Public Utilities.
13. Statistics and accounts of Public Utilities.
14. Valuation.
15. Capitalization and Intercompany Relations.
16. Publication of Commissions' decisions.
17. Special Committees authorized by the Convention or Executive Committee.

Vacancies on the Committees shall be filled through appointment from Members present, if necessary for the proper construction of Committee Reports to be presented to the Convention.

The Chairman of each Committee, or the next ranking Member present, shall make a preliminary statement for the Committee as to the Report, and the time during the session when the Report will be ready for presentation.

The President will, at this morning's session, appoint the following Session Committees:

A Committee of five (5) Members on the Time and Place for holding the next Convention.

A Committee of three (3) Members on Complimentary Resolutions.

The Committee on the Time and Place for holding the next Convention is directed to announce during the morning of the first session the Time and Place of the first meeting, so that all who desire may be heard on the subject.

Resolutions not relating to the work of other Committees will be referred to the Executive Committee.

The Election of Officers will be held at 12.00 o'clock Noon on Wednesday, November 15, 1916.

Upon demand of five (5) Members, the yeas and nays shall be taken upon any pending question, and a division of the vote shall be taken upon any pending question upon the demand of three (3) Members, and upon a division the record shall show the number voting in the affirmative and the number voting in the negative.

Special topics not covered by Committee Reports may be presented for discussion where the regular order is not disturbed and at the will of the President.

The Executive Committee held a meeting in Washington, D. C., upon the 16th day of June, A. D. 1916, for the transaction of necessary business. At that meeting the following Resolution was adopted:

"WHEREAS, a certain resolution known as the Newland's Resolution has passed the Senate and is now pending in the House of Representatives as S. J. RES. 60, which resolution provides that a joint subcommittee of the Interstate Commerce Committee of the Senate and House of Representatives, consisting of five senators and five representatives, shall investigate the subject of government control and regulation of interstate and foreign transportation, the efficiency of the existing system in protecting the rights of shippers and carriers and in promoting the public interest, the incorporation or control of the incorporation of carriers, and all proposed changes in the organization of the Interstate Commerce Commission and the Act to Regulate Commerce, also the subject of government ownership of all public utilities, such as telegraph, wireless, telephone, express companies and railroads engaged in interstate and foreign commerce, and report as to the wisdom or feasibility of government ownership of such utilities and as to the comparative worth and efficiency of government regulation and control as compared with government ownership and operation; and

"WHEREAS, it has been alleged by the carriers that interstate and intrastate transportation have become so interwoven that the attempt to apply two, and often several sets of laws to its regulation has produced conflicts of authority, embarrassment in operation and inconvenience and expense to the public, which alleged conditions should be relieved by placing the regulation and control of common carriers under exclusive Federal control; now, therefore,

"Be it resolved, that Laurence B. Finn, Kentucky, Chairman of the Committee on State and Federal Legislation be, and he is hereby directed to furnish each State Railway Commission with a copy of these resolutions, and to secure from each State Commission a full and complete statement relative to transportation conditions in the several States of the Union."

The Committee appointed under Senate Joint Resolution 60 convenes in Washington upon the 20th day of November, 1916, for the purpose of taking testimony.

Owing to the importance of this question the Executive Committee is of the opinion that the Report on State and Federal Legislation be considered first by this Convention.

Respectfully submitted,

(Signed) CHARLES E. ELMQUIST, *Chairman*

" JOHN G. RICHARDS,

" CLIFFORD THORNE,

" JOSEPH L. BRISTOW,

" C. M. CANDLER,

" ROBERT R. PRENTIS,

" WM. H. CONNOLLY.

} *Ex officio.*

MR. THORNE OF IOWA. I am very glad to say that reports have been prepared by every committee except two, and it is probable that those two will be prepared before the session is over. Credit is due to the President of the Association for this splendid situation. (Applause.)

Mr. President, I move that this report which I have read be adopted and spread upon the records of the Association.

The motion was seconded and unanimously agreed to.

### ANNUAL ADDRESS OF PRESIDENT PRENTIS.

President Robert R. Prentis delivered the annual address, as follows:

Gentlemen of the Convention:

When I first began to attend the meetings of this Association about eight years ago I regarded them as valuable chiefly because informing and educational. I thought it well for the members of the Interstate Commerce Commission and the State Commissioners to assemble once a year for the purpose of discussing their difficulties and comparing experiences, with the view of improving their own work in their several jurisdictions. I still think so.

As the years have passed, however, and while, as it seems to me, the unwise tendency is to change our government from the representative to the popular form, I have learned to regard the National Association of Railway Commissioners and other similar associations as performing a very much more significant and valuable function in our scheme of government.

I first received this suggestion from an article in *The New Republic*, referring to the National Education Association. That article said that organizations such as the National Education Association are coming to occupy an unexpectedly important place in American national life. That

"They are becoming the vehicle whereby Americans meet for joint deliberation. They constitute the gatherings at which public opinion is formed, public questions ventilated, and an essential specific interest or profession adjusted to its task in the national economy. The historian of the future, as he surveys the modifications in American political institutions during the past and the coming half century, will remark the slow but inexorable decline of our group of representative institutions and the corresponding building up of another. The legislatures are ceasing to have any representative value, and are ceasing to exercise any formative effect on public opinion. They are being poisoned by a kind of political corruption which they have neither the will nor the ability to correct. The work which they once performed is being passed on to great national organizations of teachers, social workers, business and professional men, farmers and trade unionists. These organizations are the germinating centers of American opinion; they initiate the new programs and put a quietus on the old ones. For the present they do this work unofficially, but eventually they will be recognized in the official organization as the really representative members of our political body."



While I do not think it now necessary to consider whether or not these bodies shall ever be recognized in the official organization of the government, I do believe that the observations quoted clearly state a great truth, not as yet generally perceived or recognized. I further feel that no national organization has exercised a greater or more beneficial influence upon Federal and State legislation than the National Association of Railway Commissioners.

In view of proposed legislation, some of which is actually pending before Congress, designed to destroy State regulation of railways it is of the highest importance that we should approach the consideration of the great questions involved therein without selfishness and actuated only by a desire to serve the country.

There is a fully organized movement having for its ultimate object nothing less than the absolute elimination of the states and the state commissions from all jurisdiction over intrastate rates of the railroads.

At the time the act to regulate commerce was enacted such a proposition would have been promptly rejected as plainly violative of the United States Constitution. Recent decisions of the Supreme Court of the United States, however, have encouraged the view that under the commerce clause of the Constitution the Congress may have the power to take actual control of all rates upon the new theory that railway rates are so intimately related to, and so directly affect, each other as to make it impossible properly to regulate interstate rates without at the same time taking control of intrastate rates.

The determination of this great question should not be based upon any mere local or selfish considerations, or any mere insistence upon States' rights. It should be determined upon great broad general principles, looking only to the general welfare; not that even such considerations will justify a plain violation of the Constitution, for if the change is to be made it should be done in due and orderly manner, by amending the Constitution if necessary, and not by violating the Constitution as a matter of expediency.

The officials of the great transportation lines of the country, always restive under any and every sort of control, are behind the movement. They have enlisted the support of a large number of newspapers and magazines, employed able counsel, and have prepared for the great controversy which such a proposition precipitates. The danger is that they may win at the first onslaught, but if so it will be only because those who believe such a change unwise are in a state of absolute unpreparedness. If the question is to be fairly and fully discussed and presented to the Congress, poorly as they are prepared therefor it must be done by the State commissions. Therefore this is the work to which the present hour summons us.

If the effort shall succeed then questions regarded as settled from the foundation of the government will be unsettled, and the great accomplishments of the States of this Union for the last thirty years in their endeavor to exercise efficient control

over the public service corporations which they have created and fostered, will have become unavailing and obsolete.

In this connection it becomes my duty to call your special attention to Public Resolution No. 25, Sixty Fourth Congress, and I think it proper to emphasize some views which I have with reference thereto. This resolution was introduced by Senator Newlands as Joint Senate Resolution No. 60, and reads as follows:

"Joint Resolution Creating a joint subcommittee from the membership of the Senate Committee on Interstate Commerce and the House Committee on Interstate and Foreign Commerce to investigate the conditions relating to interstate and foreign commerce, and the necessity of further legislation relating thereto, and defining the powers and duties of such subcommittee.

RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That the Interstate Commerce Committee of the Senate and the Committee of the House of Representatives on Interstate and Foreign Commerce, through a joint sub-committee to consist of five Senators and five Representatives, who shall be selected by said committees, respectively, be, and they hereby are, appointed to investigate the subject of the Government control and regulation of interstate and foreign transportation, the efficiency of the existing system in protecting the rights of shippers and carriers and in promoting the public interest, the incorporation or control of the incorporation of carriers, and all proposed changes in the organization of the Interstate Commerce Commission and the Act to regulate commerce, also the subject of Government ownership of all public utilities, such as telegraph, wireless, cable, telephone, express companies, and railroads engaged in interstate and foreign commerce and report as to the wisdom or feasibility of Government ownership of such utilities and as to the comparative worth and efficiency of Government regulation and control as compared with Government ownership and operation, with authority to sit during the recess of Congress and with power to summon witnesses, to administer oaths, and to require the various departments, commissions, and other Government agencies of the United States to furnish such information and render such assistance as may, in the judgment of the joint subcommittee, be deemed desirable, to appoint necessary experts, clerks, and stenographers, and to do whatever is necessary for a full and comprehensive examination and study of the subject and report to Congress on or before the second Monday in January, nineteen hundred and seventeen; that the sum of \$24,000, or so much thereof as is necessary to carry out the purposes of this resolution and to pay the necessary expenses of the subcommittee and its members, is hereby appropriated out of any money in the Treasury not otherwise appropriated. Said appropriation shall be immediately available and shall be paid out on the audit and order of the chairman or acting chairman of said subcommittee, which audit and order shall be conclusive and binding upon all departments as to the correctness of the accounts of such subcommittee."

Under that resolution a joint subcommittee, consisting of five Senators and five Representatives, has been appointed, and they have publicly announced that they will begin their investigations on November 20th, 1916.

The adoption of this resolution by the Congress indicates the very great progress which has been made in the country in the deliberate and concerted effort to destroy the State commissions as regulating bodies, including the taking over by the Federal government of exclusive jurisdiction to regulate intrastate rates.

The movement has been under way for several years, and is inspired by the great railway organizations of the country. Through the press and through many other great organizations they have endeavored to create a sentiment so overwhelming as to convince the Congress that the time has come, if the railways are to continue efficient public service, to make this tremendous change.

As far back as the 25th day of February, 1916, in the hearing before the Committee on Interstate and Foreign Commerce of the House of Representatives, while the resolution was under consideration by that Committee, these facts were made a matter of record.

There is a Railway Executive Advisory Committee, of which Mr. Frank Trumbull, Chairman of the Board of the Chesapeake & Ohio Railway Company, is Chairman, and thirteen railway presidents of the large lines are members, and for which the Hon. Alfred P. Thom, General Counsel of the Southern Railway Company, is counsel.

They represent between eighty-three and eighty-four per cent of the railroad mileage of the United States and systems extending from the Atlantic to the Pacific and from British Columbia to the Gulf of Mexico, that is, lines which, combined, cover the entire country. At that time a definite plan for the accomplishment of their purpose was outlined to the Committee.

Since then it has been publicly reiterated by Mr. Trumbull—  
This plan embodies two main features:

First: That there be a Federal incorporation law, under which every railway company in this country which is engaged in interstate commerce, and all of them will be construed to be so engaged, shall be required to incorporate. Such companies are to be given no option as to this, but incorporation under the proposed act of Congress is to be made compulsory, and thus the entire control of such companies, including their rates, intra and interstate, and their stock and bond issues, is to be vested in the agencies of the Federal government.

Second: Then it is proposed that in place of the Interstate Commerce Commission there shall be two commissions. One to be called the Interstate Commerce Commission, which is to be the supreme body, in charge of all the powers of regulation, on appeal as to some of such powers, and directly as to others. Another commission is to be organized, which it is suggested shall be known as the Federal Railroad Commission, whose members shall be Presidential appointees. This new Commission is to be vested with the power and charged with the duty of detection, correction, and prosecution, and those feeling aggrieved by their conclusions are to have the right to have them reviewed by the Interstate Commerce Commission.

In addition to these two great organizations they propose, as a method of getting closer to the people in the various sections of the country, and as a substitute for the present State commissions, that there shall be regional boards in every transportation region that the Congress may divide the country into; that their offices shall be in such localities. These bodies to be authorized to take evidence as to all the graver and more important questions which remain within the jurisdiction of the Interstate Commerce Commission, including the making of rates and the establishment of proper relations of rates between localities; they are also to take evidence in any case that shall be pending before the Interstate Commerce Commission as commissioners in chancery would do, reporting their conclusions to the Interstate Commerce Commission, subject to exception; the orders and conclusions of these regional boards, if not excepted to, are to be effective without further action by the Interstate Commerce Commission, unless that Commission should itself see some reason for ordering rehearings. If they are excepted to by shippers, representatives of localities or by the carriers then such differences are to be argued before and settled by the Interstate Commerce Commission.

This plan, as will be observed, is most ambitious, and the manifest purpose of this vast machinery to be organized under Federal legislation is to relieve the railway companies from any effective supervision by the States. The railway companies, as above stated, have organized their Executive Advisory Committee, employed eminent counsel, and have fully prepared themselves to present their views to the subcommittee.

I wish to emphasize my view that the issue thus presented should be approached in no narrow selfish spirit by the National Association of Railway Commissioners, and should be considered upon its merits. We may expect its advocates to present it with the greatest possible force and ability.

While intensely interested in promoting every possible improvement in the present situation, in favor of strengthening the Interstate Commerce Commission to the fullest extent necessary, and anxious that all of the necessary Federal powers shall be exercised, it seems to me that this proposition, considered in its entirety, is in the highest degree unwise, and that its effect will of necessity be retrogressive instead of progressive.

Most of the true progress of this world is made, not by tearing down, but by building up, by construction, not by destruction.

For thirty years the Federal and State governments have been enacting laws and administering them with the view of exercising efficient control over the rates and practices of the railroads. A long catalog of the benefits which have arisen from such regulation can easily be made. Forty-six States of the Union at great expense have organized commissions for the purpose of controlling intrastate rates, and exercising their constitutional powers hitherto conceded to them. The proposition is to take over all

the important jurisdiction of these local commissions and concentrate the power in two Federal commissions in the City of Washington. Then, knowing that the Interstate Commerce Commission is already overwhelmed with its work, and apparently realizing the utter futility of expecting central commissions in Washington to deal effectively with all of the many and varied questions that arise locally all over the country, it is proposed to establish regional boards in various sections of the country which shall be subordinate to the central authority at Washington. In other words they see that just as soon as they tear down the existing system they must immediately commence to rebuild a vast hydra-headed administrative bureau, with two big heads and many small ones, which will correspond in many particulars with the very organization we already have.

It is impossible for me to escape the conclusion that if these suggestions shall be adopted the cause of public regulation will be practically just where it was thirty years ago. It seems to me that experience has demonstrated that all the powers of all the States combined with all the powers of the Federal government must be exercised if public regulation is to be effective.

Since the decision of the Shreveport case (*Houston East & West Texas Railway Co., &c. vs. United States*, 234 U. S., 342), which apparently authorizes the Interstate Commerce Commission to remove discriminations between localities and shippers by requiring railway companies to make intra and interstate rates conform, it is difficult to understand the immediate need for adding to the powers of the Federal Commission as to removing such discriminations. Already the Interstate Commerce Commission has in several cases administered the very relief which the carriers claim should be afforded by new legislation, and it is claimed already has jurisdiction to correct the very evil which is alleged to exist. It is, of course, exceedingly important that there shall be no conflict of jurisdiction between the Federal and the State authorities, and I am sure that I give expression to the sentiment of a very large majority of the State Commissioners when I say that they and this Association are now, and have always been prepared to co-operate with the Federal authorities in the fullest possible degree for the purpose of avoiding such conflict.

The Hon. Alfred P. Thom, as the counsel for the Railway Executive Committee, representing between eighty-three and eighty-four per cent. of the railway mileage of the United States, said this to the Committee above referred to:

"We realize that we have no right to approach this problem from the standpoint of the private interests of the railroads. We realize that unless we can present a plan that commends itself because it is best for the public interest, that we will have no standing. We have tried to separate ourselves from the standpoint of a mere private interest in this matter, and to appreciate the spirit of the American people which is devoted to the principle of regulation. We accept in its entirety the wisdom of that policy, and our effort will not be to present a plan which we think is a plan in the

selfish interests of the railroads, but to present a plan which we believe is best for the whole American people, for the preservation of its commercial supremacy, and for the accommodation of its traffic."

These are no "weasel" words:

Mr. Thom and I have been warm personal friends since our college days, and I know him to be a man of commanding ability, with practical but high ideals upon all great public questions. I must, of course, examine his views, however, knowing that he would not be human if they were not affected by his employment and his environment. Giving full faith to his statement that they accept in its entirety the wisdom of the American policy, and that they appreciate the spirit of the American people, which is devoted to the principle of regulation, how is it that he can expect the American people, as represented by the commissions of forty-six of the States, to accept without the most rigorous protest and contest, a governmental plan which will practically nullify all of their efforts for the past thirty years? I venture the suggestion that the opportunity has come for them by some affirmative action to make good their averment of their acceptance of the principle of regulation to which the American people is devoted. That principle, firmly fixed in the thought and legislation of this people, is that the Federal government shall do all of those things which it can best do, and that the local authorities, under the jurisdiction of the State governments, shall do those things which they can best do, and that local rates and local matters can be best regulated by those most familiar with local conditions. I believe that they have greatly exaggerated the difficulties of the present situation. Are the discriminations between interstate and intrastate rates as great to-day as they were before the intervention of the Federal and State authorities? Have they forgotten the free pass abuses, the rebates, the special rates, the discriminations, the competition, the rate wars; from the burden of which public regulation has relieved them?

It is erroneously assumed by many that most of the cases of discrimination are discriminations brought about by the action of the State Commissions in favor of intrastate rates and against interstate rates. It will, however, not be difficult to find numerous interstate rates far lower, proportionately, than the intrastate rates, and hence discriminative against intrastate business in the same sense as is complained of. Indeed, it may be stated as a general proposition that the general scale of interstate rates, or long distance rates, is much lower than the general scale of intrastate rates. (I will say, by way of parenthesis, that I do not wish to be understood as saying that I think that, as a whole, the relatively low long distance interstate rates are injurious to the trade and prosperity of the country. It is these rates that have brought about competition between the large distributing centers of our vast country, and this competition has been beneficial alike to producers and consumers all over the country.)

Returning to the question of discrimination it must be noted that the mere fact that one rate is lower than another is of itself no proof of the reasonableness of either the higher or the lower rate. If justice is to be done by removing discrimination then there should first be a careful inquiry to determine which of these rates, if either, is the just and reasonable one, and I venture nothing in saying that upon fair investigation, the lower rate, or a different rate, will be found to be just and reasonable, just as often, if not more frequently, than the higher rate. So let it not be assumed that the alleged flagrant cases of discrimination so often referred to are by any means the only cases of discrimination, and let it be understood that there are many cases of discrimination brought about, not by the State Commissions, but by the carriers, either inadvertently, or in their effort to attract business.

So far as I am informed, and I have read all that has come to me on the subject, I know of only three instances, alleged to be flagrant, in which it is alleged that the State Commissions have undertaken consciously to discriminate in favor of State rates as against interstate shipments, and it is by the carriers claimed that the remedy for these flagrant cases of discrimination, without additional legislation, is already vested in the Interstate Commerce Commission. If there shall be proper co-operation between State and Federal commissions, and the railway companies, is there any practical obstacle under the law as it exists today which prevents the removal, after proper investigation, of the difficulties and discriminations of which the carriers complain? I repeat, is it not far better and more likely to accord with the views of the American people and more likely to afford prompt and efficient relief to build up from what we have, rather than to tear down for the purpose of immediately rebuilding something very similar to the existing system?

Is there any pressing need at this time for any radical change?

In Bulletin No. 18 of the Railway Business Association, which was issued during the past year, entitled "Defects in Railway Regulation", a pamphlet which has been widely circulated in the country by a national organization composed of dealers in railway supplies, the following statement, emphasized in bold type, appears:

"Expenses have risen faster than earnings, and no branch of the government performs the function of providing enlarged revenues to meet the higher cost. It is vital to national prosperity that this defect in regulation be corrected."

I desire to place in contrast with this statement (which I think would not have been made if those who are responsible for it had known of the enormous recent increase in the revenues of the carriers), certain figures from bulletins issued by the Bureau of Railway Economics, established as you know by the railways of the United States for the scientific study of transportation prob-

lems. These bulletins show that the increased operating revenues of the railways have already performed the function of providing the larger revenues which the authors of the statement inferentially criticized the government for failing to provide.

While it may not be entirely fair to compare the present large earnings with the earnings for the preceding twelve years, without some reference to the sudden prosperity, attributed by many altogether to the European war, it is interesting to note that the total operating revenues have, with some fluctuations, increased from \$1,975,174,091 in 1904 to the sum of \$3,396,808,234 in 1916, and the average per mile of line from \$9,306 in 1904 to \$14,818 in 1916. During that period the operating expenses per mile of line have increased from \$6,308 in 1904 to \$9,684 in 1916, and the net operating revenue during the same period has increased from \$2,998 in 1904 to \$5,134 in 1916, that is, the operating expenses have increased 53% while the operating revenue has increased 71%.

This increase is comparatively recent, for while in 1914 the net operating revenue per mile of line was \$3,443, in 1915 \$3,747, in 1916, as above stated, it was \$5,134. But there has been no diminution in the volume of these earnings since the statement for the last fiscal year was made up, and the reports for July, August, September and October continue to show greatly increased railway earnings. There is every reason for feeling assured that the current fiscal year will show still greater net earnings.

We can all sympathize with Mr. Justice Hughes in his appealing cry of protest against the "delusive exactness" of the mass of figures which the railway accountants and statisticians toss at us whenever we come to consider large problems in connection with our work. I think that we can say as to these figures, however, that they have an illuminating exactness which demonstrates that the statement of the Railway Business Association which I have above quoted, while true as applied to some previous years, is now untrue, for it plainly appears that recently earnings have risen very much faster than expenses, and that they have also risen much faster than investments in railway properties. I know that it is said that the figures of 1916 represent an abnormal condition, and that possibly the present prosperity of the railways will not continue. Whether this be true or not, the future can only determine. The fact is, however, that the figures for 1915, the previous year, showed the largest total operating revenue per mile of line of any year between 1904 and 1916 save for the year 1913, and the net operating revenue per mile of line showed a larger amount than for any year within the period indicated except for the years 1910 and 1913. The operating ratio for 1916 was 65.4%, the lowest operating ratio of any year within the period indicated, the highest having been for 1914, when it was 72.2%, and the next lowest within the period indicated having been in 1906, when it was 66%.



It seems to me that it is perfectly apparent, however great the perplexities and difficulties which have beset the railway managers within the past twelve years, that they have but suffered as other men have suffered, and that their business has only been affected in the same way that other business enterprises have been affected from year to year and from period to period. The merchant, the manufacturer, the man living upon a fixed salary have all suffered from the increase in the cost of living and doing business. So have the railroads, but the latter have suffered no worse, and in view of the figures I have referred to, and the proper inferences to be drawn therefrom, the suggestion that they are being bankrupted by oppressive State legislation, or because of the conflicts of jurisdiction between the Federal Commission and the State Commissions, has no sufficient justification. There are prosperous railroads, whose prosperity is brought about because they are well located, well managed, not over-capitalized, and because they have succeeded in securing a large and profitable business; and there are railroads which by reason of poor location, poor management, and over-capitalization have failed to secure a profitable business and hence are not prosperous, but the average prosperity of the railways compares favorably with the average prosperity of the other business enterprises of the country.

In 1915, largely as the consequence of concentration of traffic, the New York Central carried 2,500,000,000 more tons of freight one mile than it did in the preceding year at an actual outlay for conducting transportation of \$3,000,000 less. We see in the financial columns of the newspapers such statements as these: That the Union Pacific is now earning at a rate which if carried out for the full year will give it about 20% for the common stock, and that the New York Central promises to yield about 22% for dividends on its stock, and that the Erie will earn for the current year about 20% available for dividends on the first preferred, that is, five times what it is entitled to receive in any one year. These results are typical, not exceptional, and many of the other large railway systems of the country are likewise prospering.

While considering the encouraging features of the general railway situation let us not forget the enormous economies, for which the managers of the railways are entitled to unstinted praise, which have recently been brought about by better loading of cars and the increasing of train loads. For instance, the figures for traffic on the Chicago & Northwestern Railway show that the train load has been raised from an average of 210 tons not longer ago than 1910 to an average of 491 tons for the year ending June 30th, 1916, and this enormous increase in the average train load has brought an increase in the revenue per train mile run from \$2.32 to \$3.28, and this in spite of the fact that the average freight rate per ton mile was lower in the latter year than the former.

This is only one example out of many like it which the statistics disclose.

I am aware that there are many other facts to be considered besides these facts shown by the figures which I have quoted.

I have observed that one of the imperfections of the human mind is its tendency to emphasize certain facts which cannot be contradicted, and from those facts to draw false conclusions. It seems to me that this is manifestly true of many of the facts which are relied upon by those who take the opposite view. For instance, the statement that while rates have remained stationary, taxes, materials, and all other expenses have increased is substantially true, and considered alone would indicate that rates must be increased if these increased expenditures are to be properly met and capital to receive its just return but when considered in connection with other facts, easily susceptible of proof, such as, that along with the increase in expenses have come proper and needful economies, such as the better loading of cars, and that the volume of business has increased, and that the character of equipment has so changed as to enable the railroads to handle a larger volume of business, and it is shown that the increase in expenses has been met by the increase in business and revenue, then the fact that expenses have increased loses much of its significance.

Are we not then justified in claiming that the lack of prosperity in past years should not be attributed to excessive regulation nor to the inadequacy of rates, considered as a whole, but chiefly to lack of business, because the recent results prove that with the same facilities reasonable profits have been made during the past fiscal year, and this, it will be noted, only because of increase in the traffic and in spite of the alleged excessive regulation and adverse legislation which is complained of.

The editor of the financial column of the New York Times, who I take it is not unfriendly to railway interests, evidently thinks so, for in the issue of October 9th, among other optimistic views as to the present business prosperity and its continuance to be reasonably expected at the end of the war, he says this:

"It is a habit to put all the railroads in a group and of late it has been a habit to talk of all railroads as though they were subject to the great difficulties under which some roads, even many, are laboring. That is a false market point of view. There are railroads in a very strong position—railroads which year after year have paid good dividends and which today are earning those dividends twice over and in some cases more. Why should there not be confidence in the ability of such properties to withstand the effects of regulation, and to continue to give good returns to their stockholders? Moreover, why is it not reasonable to recognize the fact that a road once poor is not necessarily poor forever? Big earnings month after month, with no sign of diminution are surely a cure for months of the other sort. They are, moreover, the best sort of offset for such added burdens as that imposed by the eight hour law."

The relatively large net earnings for the fiscal year ending June 30th, 1916, have continued with increasing volume during the succeeding months and this inspires the Financial Age in its issue of October 7th, which is also most friendly to railroad interests, to say this:

"That the railroad list should have occupied so much of Wall Street's attention during the past week is not surprising in view of the remarkable statements of railroad earnings that are daily coming to hand. Recently published returns of several of the companies largest systems are not only impressive in their aggregate, but all the more so on account of the substantial increases over corresponding periods of last year when traffic on all the leading systems was beginning to show material improvement over previous years. A notable instance of this was furnished by the publication during the week of the Union Pacific's report for the fiscal year ending June 30th last, which shows the largest gross earnings in the company's history, with surplus income after deducting all charges, including the preferred stock dividend, equivalent to 15.65% on the common stock, which compares with slightly less than 11% in the preceding year. Another remarkable showing was that of the Louisville & Nashville, whose income balance for the last fiscal year was equivalent to about 19.4% of the company's capital stock, as against 6.75% in 1915. Such instances might be multiplied indefinitely, but all of them are eloquent of the fact that the wonderful activity and prosperity in mercantile and industrial lines that have developed since war began have spread freely to the railroad world."

The following table is compiled from an editorial in the *Financial Age* of October 21st, 1916, entitled "Evidences of Railroad Prosperity":

COMPARISON OF INCOME AVAILABLE FOR DIVIDENDS EARNED BY THE RAILROADS  
NAMED IN THE FISCAL YEARS OF 1915 AND 1916.

	1915 Per cent.	1916 Per cent.	
Union Pacific .....	11.	15.65	Common
Southern Pacific .....	7.2	11.	
Atchison .....	9.2	12.3	Common
St. Paul .....	3.28	7.33	Common
Northern Pacific .....	7.58	10.47	
Chicago, St. P., Minn. & Omaha.....	7.71	11.97	
Northwestern .....	7.50	11.4	Common
"Soo Line" .....	7.87	16.32	Common
Wisconsin Central .....	Deficit	9.18	
Alabama Great Southern .....	5.4	13.6	Common
Illinois Central .....	6.27	10.8	
Louisville & Nashville .....	6.8	19.4	
Southern .....	.03	5.	Preferred
		5.3	Common
Lehigh Valley .....	10.4	12.65	
Jersey Central .....	19.36	21.8	
Pennsylvania .....	8.5	11.	About
Baltimore & Ohio .....	5.5	7.3	
Reading .....	10.6	11.5	
Chesapeake & Ohio .....	4.25	11.	Nearly (10.96)
Norfolk & Western .....	8.8	16.7	Common
New York Central (fiscal year ending Dec. 31st).....	8.	18.	Probably

While technically available for dividends many of the railways are wisely expending their increased earnings for deferred maintenance and needed betterments.

Has not the time come then for those speaking for the railroad interests of the country to cease singing their jeremiads? Has not the time come for optimism instead of pessimism? I do not under-

rate the fact that there have been many lean years for many railroads in the past ten years, but perhaps the chief reason for the leanness was lack of business, and not excessive regulation nor unremunerative rates. Certainly it could not be insisted that the rates of the more prosperous railroads of the country should be increased in view of the earnings during the past fiscal year and at this time, and it is obvious that it would be no boon to the unprosperous roads merely to increase their rates. This for the reason, well known to all railroad men, namely, that the unprosperous roads are competing for business with the prosperous roads, and to increase their rates will simply be to prevent that competition and destroy the unprosperous roads. If then there ever can be a time when optimism should prevail in railway circles and when their managers should cheerfully and not so sorrowfully co-operate with the Interstate Commerce Commission and with the State Commissions, that time is at hand.

According to an Associated Press dispatch, Mr. Frank A. Vanderlip, President of the National City Bank, in an address to the Society of Railway Financial Officers in Washington on October 20th, expressed the opinion that exclusive Federal control will not solve railway difficulties, and he adds: "the selfishness of the public, stockholders, wage earners and politicians is the chief trouble with the railroads". May we not add to this list those who, without ceasing day or night, like the sad prophet of Israel, continue to cry "Behold and see if there be any sorrow like unto my sorrow", while we know that they have no monopoly of this the common heritage of the race, which, as we have learned both from the highest authority and from experience, "is born unto trouble as the sparks fly upward".

It is undoubtedly true that the greatest immediate need of the railroads, and therefore a need of the country, is that they may secure new capital for the purpose of adding to their facilities by increasing the number of their tracks, improving their condition and adding to their rolling stock, which are not sufficient for the business now being offered. To secure these betterments it is necessary that they secure new capital. Are they to secure it by continuing to advertise their own poverty through public speeches made by their officials and attorneys and through the newspapers, which give publicity to their sentiments, exaggerated in every possible way? The wonder is, considering all their own efforts to show their desperate condition, that any of them have escaped bankruptcy. Would it not be wise for some of them to assimilate some of the homely but cheerful philosophy of "Mrs. Wiggs," she of the "Cabbage Patch," and not be quite so sorry for themselves?

I do not believe that any other business in the country could have continued to exist for so many years under such a campaign of depreciation. I do not mean to say that the recent increase in earnings (which the Railway Age Gazette states whether "taken

by themselves or in comparison with the figures for the preceding year alone seem to indicate an amazing degree of prosperity") alone constitute the panacea for all of the ills of the present railway situation. I do say, however, that amazing prosperity will tend to reestablish their credit, that their present earnings enable them to keep up their property to a higher degree of efficiency, that reasonable dividends to their stockholders are thereby assured, and that all of these things combined, if continued, will build up their credit and enable them to secure the new capital which they need. That is, amazing prosperity will ultimately reestablish their credit unless they continue to destroy it themselves.

I do not wish anything which I have said to be construed as indicating that I am unmindful of the fact that the managers of the railway companies of this country have carried and still carry great burdens. A very large number of great and strong men are in the railway service, and are devoting their lives to the solution of the many and grave problems which are unsolved. They have performed a great public service, which the country should recognize, but, like the other sons of Adam, they are liable to err in judgment and in action, and some of them have so erred.

On the other hand, I will not deny, but will freely agree that some railroad commissioners have, as it seems to me sometimes misconceived their duty to the public. Some oppressive rules and regulations have been insisted upon; some unnecessary burdens have been imposed; some simple requests of the railway managers for aid and co-operation have been refused, and railway commissioners of this class have retarded the progress of the country, and, in my opinion, have failed to perform a part of the great public service for which they were chosen. As, however, there are many great and wise men in railway business so also there are many patriotic and sensible men upon the public service commissions of the country. I believe that without flattery, a very large majority may be thus characterized. The best results can only be obtained by the fullest and frankest cooperation between the public service commissioners and the railway managers. While they approach the questions involved from different angles many of the objects sought by each are the same, and notwithstanding all of the inherent defects of human nature, we believe there is no reason for depression or despair, and while the country is enjoying an unexampled period of prosperity why may not the railroad companies cease their songs of woe and join in the chorus?

The slogan or shibboleth of those antagonistic to State regulation is, that they have forty-nine masters, that is, that forty-eight States and the Federal government are all regulating them at the same time. Let us examine these catch words for a moment. Possibly in the heat of argument exaggeration may be excused, but what railroad in this country runs through forty-eight States? May we not at once say then without hesitation

that no railroad in this country has forty-nine masters. Their masters in this sense of the word are the Federal government as to matters referring directly to interstate commerce, and as to local matters and intrastate commerce those States only in which they are located and doing business. Then again, have they any more masters than every other citizen of this country? When I travel from Virginia to California I am subject to the laws of the Federal government all the time, and from time to time subject to the laws of the State in which I happen to be travelling. Some of the large private corporations do business in as many States, or more, as any large railroad system. Have the railroads any more masters than such corporations, which are subject to the Federal law, and at the same time are subject to the laws of the various States in which they do business and by which they are protected? They have one master—the law, and the sovereignty of the law is, and should be, master of us all.

Tested in this way it may be said to be simply an attack upon, and criticism of, our form of government.

That is to say that the framers of the Federal Constitution were not wise when they adopted the form of government which provides for the dual State and Federal sovereignty; that the encomiums bestowed upon this Federal system of ours by students of political history are all based upon erroneous conceptions of its value; that the imitations of it by other nations in their struggles for political freedom have been undertaken without due consideration and are unwise; that the magnificent progress which we have made during the one hundred and twenty-nine years of its existence owes nothing to our governmental system,—indeed that all the lessons of the remote and recent past are to be forgotten in our thoughtless and headlong rush in the name of progress, towards centralized power and bureaucratic government.

Possibly this process of centralization of authority in the Federal government at Washington is to go on, with accelerated pace in the future, but if so let us fully realize what we are doing. Let us not close our eyes to the fact that if those who believe in thus changing the form of our government succeed in their efforts then that change will be radical and far-reaching, and let us quit boasting of the wisdom of our fathers in providing that form of government which they evidently intended when they adopted the United States Constitution.

If the mature judgment of the nation is that we have made a serious mistake in the form of our government let us meet the situation frankly and without subterfuge, let us amend the Constitution and abolish State control over local affairs, and cease our labored and dubious reasoning in our efforts by construction to enlarge the plain provisions of the Federal Constitution.

I commend to the Congress and to the Railway Executive Committee these weighty and carefully considered words of that

master of logic and diction, the Hon. Elihu Root, taken from his recent annual address as President of the American Bar Association.

After referring to the necessity of developing our vast new body administrative law, and calling attention to the fact that it is still in its infancy and still crude and imperfect, he says:

"The development of our law under the conditions which I have pointed out will be accompanied by many possibilities of injurious nature. There will be danger that progress will be diverted in one direction and another from lines really responsive to the needs of the people, really growing out of their institutions, and will be attempted along the lines of theory devised by fertile and ingenious minds for speedy reforms. Ardent spirits, awakened by circumstances to the recognition of abuses, under the influence of praise-worthy feeling, often desire to impose upon the community their own more advanced and perfect views for the conduct of life. The rapidity of change which characterizes our time is provocative of such proposals. The tremendous power of legislation, which is exercised so freely and with little consideration in our legislative bodies, lends itself readily to the accomplishment of such purposes. Sometimes such plans are of the highest value. More frequently they are worthless and lead to wasted effort and abandonment. The test of their value is not to be found in the perfection of reason. Man is not a logical animal, and that is especially true of the people of the United States and the people of Great Britain, from whom our methods of thought and procedure were derived. The natural course for the development of our law and institutions does not follow the line of pure reason or the demands of scientific method. It is determined by the impulse, the immediate needs, the sympathies and passions, the idealism and selfishness, of all the vast multitudes who are really from day to day building up their own law."

Pursuing the same line of thought he says:

"There will always be danger of developing our law along lines which will break down the carefully adjusted distribution of powers between the National and State government. Upon the preservation of that balance, not necessarily in detail but in substance, depends upon one hand, upon the maintenance of our national power, and, on the other hand, the preservation of that local self-government which in so vast a country is essential to real liberty."

Then growing impassioned he concludes his thought upon this general subject with this dire prophecy:

"And if the process goes on our local governments will grow weaker and the central governments stronger in control of local affairs until local government is dominated from Washington by the votes of distant majorities indifferent to local customs and needs. When that time comes the freedom of adjustment which preserves both national and local liberty in our system, will be destroyed and the breaking up of the Union will inevitably follow."

Recollect, these are not the words of a swashbuckling Southerner, but they are the words of Hon. Elihu Root.

When this Association was organized under the guiding hand and inspiration of Judge Cooley, the first Chairman of the Inter-

state Commerce Commission, as its President, and at its first meeting in this City on the fifth day of March, 1889, he emphasized the need for co-operation and concert of action between the Interstate Commerce Commission and the State Railroad Commissions, and this doctrine has been continuously emphasized by all of our leaders from that day to this. The most serious complaint now made of the present system is the lack of uniformity, growing out of the differing legislation of the Congress and the States, as well as the differing legislation of various States, and yet the proposition is that in order to secure uniformity the very agency through which such uniformity as does exist has, in great measure, been secured, must be destroyed.

Every important question involving the regulation of the railways, almost without exception, has been first proposed, argued and debated upon the floor of this Association. Following these debates has come practically every amendment of the act to regulate commerce, and in almost every instance a number of the States of the Union adopted similar legislation before it had been adopted by the Congress.

This Association has not simply advocated and favored uniformity as a sentiment. It has done much of importance to promote uniformity. To enumerate: The accounting methods of the railways and of making the annual operating reports has been greatly improved, and is practically uniform throughout the country, so that they now know more about their own business than they ever knew before; the safety appliance laws have been enacted. Such slow progress as has been made in classification owes much to the insistence and persistence of this Association; the demurrage rules which are now practically uniform throughout the country, were framed by a committee of this Association under the chairmanship of the Hon. Franklin K. Lane, then a member of the Interstate Commerce Commission; this is true also of the express rates, not long since in a state of confusion, which are also now practically uniform throughout the country. At this very session of this Association much progress will be reported in bringing about uniformity in the elimination of dangerous crossings and the precautions to be taken at crossings. The list might be prolonged to cover almost every phase of public regulation, and I cannot conceive of any better method under our dual form of government for the creation of nation wide sentiment for the promotion of uniformity of legislation and practice than the maintenance of the State Commissions, with unimpaired powers, and of this Association with all of its activities.

The charge of lack of uniform laws in this great country may doubtless be sustained by reference to a number of laws passed by the various States, but notwithstanding these laws we may safely venture to say that uniformity has been greatly promoted since the Federal and State governments began to exercise their powers as



well as by such exercise, and that it exists today in a far greater degree than formerly, when each railway company was free to compete with every other and to make its own rules and regulations. While there may be some glaring exceptions, it is unquestionably true that the great work of this Association from its beginning to this day has been in the promotion and securing of uniform laws, Federal and State, and uniform regulation, and there has never been a year since its organization that substantial progress has not been made. If the State Commissions are shorn of their powers the cause of regulation will be hindered and not promoted. I know that the sentiment of this Association is unequivocally and unalterably opposed to all unjust and unlawful discriminations in favor of either State or interstate traffic. I suggest that the time has come for us to affirm that sentiment in some concrete form. I therefore recommend that this Association pass a resolution to the following effect:

RESOLVED, That we favor the establishment and maintenance of reasonable and remunerative rates for railway companies by State and Federal authority, and that we oppose the making of either State or interstate rates with the view of creating discriminations in favor of or against any class of traffic or any community, and that we pledge ourselves to cooperate with each other for the purpose of preventing the establishment of any such discriminative rates, and of removing such unlawful discriminations, if any there be, as may now exist.

What then do we propose? We propose that we shall continue the policy of the past which has produced results, which, while not perfectly satisfactory, has certainly accomplished many reforms, and justifies the continuance of the combined efforts of the Federal and State governments to correct the errors of the past, and remove the abuses of the present.

We propose by amendments of the Act to Regulate Commerce, as its defects are disclosed, to remedy those defects, and to reach out after improvements for the future. Public regulation has not broken down, and the State Commissioners will in the future, as in the past, unite their efforts with those of the members of the Interstate Commerce Commission through this organization, and otherwise, so to amend the Act to Regulate Commerce as to enable the latter Commission the better to perform the service which the country desires it to perform. This Association will doubtless approve the effort to increase the number of Interstate Commerce Commissioners, as well as any other legislation which the Commission desires for the strengthening of its control over interstate commerce.

All growth which is enduring is slow. Nature never hastens, Michael Angelo visualized his magnificent conception of the creation on the walls of the Sistine Chapel in the Vatican at Rome by picturing the powerful hand of God rolling the sun and the moon from off the tips of His fingers, and the soul is stirred by that

vision of power, but instructed by the geologists we have learned that the Creator did not build the universe in that way. We are told that He took His time through the eons and immeasurable periods of the past to build the physical world out of crude material which in the ages before that He had already created, and so He continues from age to age to educate and improve humanity for that "far off divine event to which the whole creation moves."

Let us then take a lesson and proceed to better things confidently but without impatience. Progress in public regulation has been slow, painfully slow, but it has progressed, and it has not failed.

Let us by all means correct our mistakes and continue to improve our legislation, National and State.

For, as old Doctor Jowett would say: "None of us is infallible, not even the youngest of us."

In all and above, all let each one of us, and this is meant to include Commissioners, legislators, State and Federal, as well as railway managers, co-operate for the better things which must of necessity come as the result of such co-operation. It is the right spirit, the spirit of fairness which we should above all desire, the respecting of the opposite and antagonistic point of view, the proving of all things and the holding fast to that which is good; the discarding of the worthless and the adopting of the best as we are given wisdom to perceive what is best which I am urging. To those who think that this is too sublimated, ideal, general, and vague to be helpful, I would say, that we stand ready to welcome the practical man who can devise the efficient remedy, and we stand ready to adopt it when he satisfies our reason and judgment of its wisdom. For our guidance and support let us always bear in mind those inspiring words of Daniel Webster:

"Justice is the greatest interest of man on earth. It is the ligature which holds civilized beings and civilized nations together. Wherever its temple stands, and so long as it is honored, there is a foundation for social security, general happiness, and the improvement and progress of our race. And whoever labors upon this edifice with usefulness and distinction, whoever clears its foundations, strengthens its pillars, adorns its entablatures, or contributes to raise its august dome still higher to the skies, links himself in name, fame and character with that which is, and must be, as durable as the frame of human society."

(Applause.)

Mr. THORNE, of Iowa. Gentlemen of the convention, we have listened with great interest and pleasure to this magnificent address of the President of this Association, who has recently been appointed a member of the Supreme Court of Virginia. (Applause) I know I express the thought of the members of our organization when I say it is a masterly and able statement of the prevailing thought of the railroad commissioners of this country. I move that it be

printed as a document, and that copies be sent to the Newlands' Committee, and to all members of Congress, and to such other persons as the Executive Committee of the Association may determine.

Under the circumstances I believe it would be better for me to put the motion.

The motion was seconded and unanimously agreed to.

### STATE AND FEDERAL LEGISLATION.

The **PRESIDENT**. The Convention will proceed with its business in the order provided by the Executive Committee. The first report in order is that of the Committee on State and Federal Legislation, which will be presented by its Chairman, Mr. Laurence B. Finn, of Kentucky.

Mr. **FINN**, of Kentucky. Mr. President and gentlemen of the Association, the other members of the Committee on State and Federal Legislation are as follows: Clifford Thorne, of Iowa; H. F. Bartine, of Nevada, P. W. Dougherty, of South Dakota; Henry T. Clarke, Jr., of Nebraska; Elliott Northcott, of West Virginia; and James F. Harlan of the Interstate Commerce Commission.

I wish to state, Mr. President, that this report is simply a compilation of the answers received to the inquiries forwarded by direction of the Executive Committee, and that on account of the delay in receiving the responses, some of which were received only the day before I left home, it was impossible to forward the results of this compilation to the various members of the Committee; and I would ask this Association to make this report a special order for tomorrow morning at 10 o'clock, so that I may have some opportunity to confer with the other members of this Committee this afternoon and this evening.

Mr. **HALL**, of Nebraska. Mr. Hentry T. Clarke, Jr., of Nebraska, who is a member of that Committee, will arrive tomorrow morning. I second the motion of Mr. Finn.

The **PRESIDENT**. You have heard the motion that the report be made the special order for tomorrow morning at 10 o'clock. Is there any discussion?

The motion was unanimously agreed to.

### RAILROAD SERVICE, ACCOMMODATIONS, AND CLAIMS.

The **PRESIDENT**. We will now hear the report of the Committee on Railroad Service, Accommodations and Claims, which will be presented by its Chairman, Edward C. Niles of New Hampshire.

Mr. **NILES**, of New Hampshire. The report of this Committee is designedly made extremely short this year. At a time when the

question whether we shall further continue to regulate at all is a vital question, we have not thought it worth while to waste much time on the details of the manner of regulation.

The subjects of railway service and accommodations have been so fully covered by recent reports of this committee in 1912, 1914, and 1915, that we have despaired of presenting to the association any original suggestions on these subjects. Questions of this nature are, however, arising almost daily in the work of every commission. And it is a real help to have at hand for ready reference information as to how they have been dealt with by other commissions, and some discussion of the principles by which action in such cases should be governed.

In view of the amount of time which will necessarily be devoted at this session to questions of the most vital importance, we have thought that we could perform no more useful service than merely to recapitulate, especially for the benefit of commissioners recently appointed, or who have not attended previous sessions, the subjects discussed in the earlier reports of this committee to which reference has been made.

These subjects include Location and Construction of Stations; Station Service; Agency and Non-Agency Stations; Caretakers at Non-Agency Stations; Posting Notices; Train Bulletins; Telephones in Stations; Baggage Rooms and Transfer Companies; Railroad Agents; Lighting Station Platforms and Grounds; Heat, Light and Ventilation, Toilet Facilities, Drinking Water, Sanitary Cups, etc., in Stations and on Trains; Liquor on Trains; Train Service; Delayed Trains; Compartment Cars; Package Cars; Passengers on Freight Trains; Steel and Wooden Coaches; Pooling of Freight Cars; Inspections by Commissions; and other subjects. Any commissioner in doubt as to how he should deal with any question of this character can be assured that by reference to these reports he will find suggestions and precedents which cannot fail to be of real assistance.

As to the subject of claims there is a single matter which we think should again be called to the attention of the association.

Shippers' claims on account of overcharges, under the Interstate Commerce Act, must be filed within two years of the date of their accrual. On the other hand, the claim of a railroad against a shipper, based on an undercharge, is barred only by the statute of limitations of the jurisdiction in which suit is brought.

This distinction is on its face unjust. Both classes of claims arise by the fault of the railroad, through the error of one of its employees. When the shipper is injured by the error, he has only two years in which to obtain redress. When the railroad is the sufferer, it can reimburse itself for the loss occasioned by its own error at any time within a period generally at least three times as long.

And this discrimination, unjust in principle, often produces special injustice in practice. Large consignments of commodities

are quite commonly sold f. o. b. cars at point of manufacture, the price being based on the agreement of the consignee to pay the freight. The charges are made out by the railroad's agent at the point of shipment, and are checked by the receiving agent, and again in the auditor's office. The consignee pays the bill as presented to him. Then the matter slumbers for four or five or six years, when the railroad causes a special audit to be made of its waybills for some years past, and it is discovered that on this particular shipment an undercharge was made. The consignee cannot be found, or the claim cannot be collected from him, and demand is made on the shipper; and he has to settle. Cases have been brought to the attention of commissions in which, between the time of the shipment and the discovery of the error, the consignee has disappeared, or has become financially worthless, or has died or gone through bankruptcy and his estate has been settled and distributed. In such cases the shipper, entirely through the fault of the railroad, is compelled to pay a sum which may convert what would have been a moderate profit on the original transaction into an absolute loss.

Such cases are not fanciful and imaginary. They are actual, and of frequent occurrence. And there is no justice in them.

This matter has already been the subject of discussion before the Committee on Interstate and Foreign Commerce of the House of Representatives. We recommend that the Committee on State and Federal Legislation of this Association be authorized in behalf of the association to take such steps as may be necessary to secure from Congress legislation placing upon claims by carriers for undercharges the same limitation as is established by law upon claims by shippers for overcharges.

EDWARD C. NILES,  
*Chairman,*

FRANK J. MILLER.

Mr. NILES, New Hampshire. I move the adoption of the recommendation of the report.

The PRESIDENT. Is there any discussion? Mr. Niles moves the adoption of the report which he has just read.

The motion was unanimously agreed to.

## GRADE CROSSINGS AND TRESPASSING ON RAILROADS.

The PRESIDENT. We will next hear the report of the Committee on Grade Crossings and Trespassing on Railroads, which will be presented by Thomas Duncan, of Indiana, Chairman of that Committee.

Mr. Duncan read the report of the Committee as follows:

The subject of accidents at grade crossings has always been vital, but the appearance in recent years, on public highways of automobiles of high power and great speed has intensified an already almost intolerable condition. The welfare of the state demands the best effort of all in authority to avert these disasters.

In accidents at grade crossings about 2,000 persons a year are slain. Many others are injured and there is a vast destruction of property.

The economic value of a human life is great. Considered wholly as a productive power, the people of a nation are its greatest asset. A wage earner, who receives \$750.00 per annum, represents a capitalization of \$15,000.00; at 5%. As earnings of the individual increase so does the value of the individual to the nation. The state has an earning power of \$100,000.00 in every citizen who earns \$5,000.00 a year. \$200,000,000.00 a year is a conservative estimate of the nation's loss in injuries and deaths at grade crossings. Yet, this loss is the least consideration. These tragedies where whole families are slain in an instant inflame a people and incite a spirit of violence against the great properties of the railroads. In the presence of their dead men vow revenge and get it. They spurn the cold theories of economics and loose sight of the earning power of the dead.

This Committee has been one of long standing in this Association. This year the American Railway Association appointed a Special Committee on the Prevention of Accidents at Grade Crossings. A joint session of this Committee and your Committee on Grade Crossings and Trespassing on Railroads was held at the Congress Hotel, Chicago, Illinois, June 28, 1916. At that meeting your Committee was represented by myself, Mr. Wilson of the Iowa Commission, and Mr. Walker, Secretary of one of the New York Public Service Commissions. The Committee of the American Railway Association was represented by Messrs. McCrea, Bardo, Towne, VanWinkle and Elliott.

At this meeting all agreed that the evil we had met to consider was serious and progressive, and that the public welfare invited the friendly and earnest cooperation of the two associations there represented, in formulating some uniform method of protecting all crossings where railroads and public highways intersect. The purpose was to determine upon what legislation, if any, the two associations could join in recommending to the various states for enactment into laws to remedy the evil complained of.

The report of that joint meeting has been distributed to the various state commissions and with its recommendations you are no doubt familiar.

They are as follows:

- (1) That every grade crossing should be protected by an approach warning sign to be placed in the highway at a dis-

tance not less than 300 feet on each side of the railroad tracks, the sign to be a circular disc not less than 24" in diameter painted white with a black border and black cross lines with the letters "R R"—as shown by Exhibit A. Where deemed necessary this approach warning sign to be properly lighted at night.

- (2) That the railroad companies maintain, within the limits of their rights of way proper cautionary signs such as are now in use or authorized by law, and where deemed necessary such sign shall be equipped with a red light at night.
- (3) That all lights displayed at night towards the highway at grade crossings shall be red.
- (4) That all crossing flagmen use during the day a uniform disc 16" in diameter painted white with a black border and the word "STOP" painted thereon in black letters about 5" high, instead of the vari-colored flags which are now being used. For details see Exhibit B.
- (5) The uniform painting of all crossing gates with alternate diagonal stripes of black and white. See Exhibit C.
- (6) That the railroad companies, wherever practicable, be required to maintain their property at grade crossings free of obstructions to vision; also that the highway approaches to crossings shall be so graded that the free passage of vehicles shall not be impeded.
- (7) That the National Association of Railway Commissioners, the American Railway Association, and the American Automobile Association, consider the advisability of agreeing upon whatever legislation may be necessary in the several states to make thoroughly effective the protection of grade crossings; and that it is our opinion that a uniform law requiring vehicles approaching such a crossing to reduce speed to a safe limit at the warning approach sign is advisable.

Accidents at grade crossings frequently happened while the travel on highways was in vehicles drawn by horses, but the automobile has revolutionized the travel on public highways. By means of this instrumentality citizens travel from state to state and go into new surroundings where they have no knowledge of the presence of tracks, and know nothing of the schedule of trains. The presence and uniformity of the warning sign is imperatively demanded if accidents are to decrease.

The sign should signify the same everywhere. It ought to be so installed as to be in plain view of the driver of the vehicle, and so that it could be plainly read at night by automobile headlights.

The sign on the right-of-way should be as prominently displayed. Wherever the warning sign can be lighted at night it will increase its usefulness. The drivers of vehicles drawn by horses will receive no practical help from the warning sign in the night

time unless it is lighted. The law should require the driver to slow down at the first sign to such a speed as will enable him to have his vehicle under complete control when he reaches the second sign.

The uniform painting of all crossing gates with alternate stripes of black and white, strikes the traveler like a flaming bush. No prudent man will misconstrue its significance. The uniform red light and the striped gates will soon familiarize a people with their significance. The sign carried by flagmen at railroad crossings should be plainly understood by travelers. Flags of all color and kinds and sizes are now in use by flagmen. The circular disc recommended by the joint committee looks both to effective warning and uniformity. No one needs to misunderstand its significance.

We would not have you understand that accidents at grade crossings are all due to the fault of the traveler on the public highways. Many of these crossings are so constructed and maintained as to be fit instruments to kill automobile engines. The approaches in many places are too abrupt. The law should require at every grade crossing a regular and even grade so that the passage of automobiles or other vehicles will not be impeded. The terrific speed of trains invites the destruction of travelers overtaken with the least difficulty while crossing a railroad track.

In Indiana the law requires the trainmen to ring the bell and blow the whistle as the train approaches a crossing. This duty is often neglected. Public highways cross railroads at acute angles and in sharp curves and in deep cuts. Vegetation is permitted to obstruct the travelers' view. Let these conditions be aggravated by a bad crossing, and the traveler without his fault is often caught in a death trap.

We have given the railroads in Indiana power to condemn and remove obstructions to the travelers' view, where such obstructions are not on the right-of-way.

The driver of an automobile, carrying other persons, who carelessly brings such vehicle into collision with a moving train should be guilty of a felony. In an action for damages against the railroad company to passengers or driver in a vehicle carelessly brought into collision with a moving train contributory negligence of the driver should be by law a complete defense.

Where those in charge of a train have carelessly omitted to give statutory signals contributory negligence of a driver of an automobile, or of the passengers therein, should not be a defense to an action for damages instituted by such driver or passengers for injuries inflicted in a collision with such train.

The state has power to stop this needless and cruel destruction of human life. But violent diseases need heroic remedies.

During the eight years beginning June 30, 1907, and ending June 30, 1915, the railroad systems operating in whole or in part in the State of Indiana have expended the following:



	Capital Account	Charged to Operating Expense
Separation of grades,	\$20,569,986.54	\$2,150,272.36
Towers and houses, etc.	280,328.85	1,853,317.89
Photographing highway crossings	18,503.49	15,498.45
Watchmen at grade crossings,		7,077,515.26
Alarm gongs at " "	45,658.26	236,279.36
Total,	\$20,914,477.14	\$11,332,883.33

In the State of Indiana these systems have expended for

Separation of grades,	\$2,927,992.41	271,235.33
Towers and houses, etc.	154,361.83	557,355.84
Photographing highway crossings,	12,240.03	7,004.52
Watchmen at grade " "		2,275,530.85
Alarm gongs at " "	12,650.79	66,780.20
Total,	\$3,107,245.06	\$3,177,906.74

The large sums of money expended by the companies for the purposes above mentioned have not yielded so far the return that was anticipated from the investments. Maintaining gongs and watchmen at highway crossings, and houses and towers for the men so stationed has no doubt resulted in the saving of many human lives. It has certainly reduced largely liabilities for damages that would have been suffered by travelers on the streets of the towns and cities of the state. Yet the growth of the automobile traffic has overcome the results expected from these investments.

The legislation so far proposed is but an aid for the prevention of accidents at crossings. The only specific against these disasters is the separation of grades. This defies the careless driver and the careless train crew.

There are 6679 grade crossings in Indiana outside of the towns and cities of the state. Over these crossings 3085 passenger trains and 4212 freight trains pass daily, and the railroads estimate that more than 200,000 people travel over these crossings each day. In the towns and cities of the state there are perhaps 10,000 more grade crossings. To separate all these crossings in the country and in the towns and cities would cost approximately \$500,000,000. To separate them in a generation of thirty years would require an annual expenditure of more than \$15,000,000. It is the work of a century, but a systematic, progressive scheme, persistently pursued would remove the most dangerous of these situations. The only practicable solution is to proceed methodically year by year. The expense must, in its final analysis, come from the people. The state has the constitutional power to distribute the cost of the

separation of grades in any way it chooses to do so. It can apportion it between the counties, towns and cities and the railroads, or can require the railroads to pay it all. It will, perhaps, never be necessary to separate all grade crossings. Where the view in either direction is wholly unobstructed for a long distance, and neither trains nor travel on the highway is frequent the economic loss would exceed the gain.

We have not reached the point in Indiana, and other central states, where it would be a wise public policy to refuse to establish any more highway crossings at grade. But the increase should be only such as is imperatively demanded by the necessities of developing communities.

Additional powers should be given state commissions to establish new highways and to abandon and consolidate existing highways. The state will find it necessary to decrease the number of grade crossings by this method.

In the meantime, while this preparedness is in progress and the states are slowly advancing in this long, expensive and difficult work, the flagman and the alarm bell will be called into action frequently as the years go by. Millions upon millions are now expended for these purposes, and this expenditure will increase with the increasing years. The railroads may not find direct compensation for these expenditures, but their share in the general prosperity of the community is an ample and just reward.

From the figures given it will be observed that Indiana has required the railroads to make an annual expenditure for the purpose of the protection of grade crossings of more than \$750,000 for the last eight years.

This enormous loss of life and property in accidents at grade crossings is the terrible price we pay for rapid transportation. Those operating the railroad trains are but endeavoring to meet the public demand. That the demand exists is demonstrated by the automobile traveler on the common highway. The prophetic eye anticipates no abatement of the existing demand, and the nation must suffer on, until in the fulness of time the dangers are removed, at a cost greater than that of the Civil War.

But little can be done to prevent accidents to trespassers. The law looks with little favor on the trespasser's action for damages, and, so long as people foolishly walk the tracks of railroads, these tragedies will occur. Under practically all circumstances accidents to trespassers are due largely to the fault of those killed or injured. It is impossible to police the railroads' right-of-way, and so long as people trespass upon these properties, society must bear the loss.

We have no specific remedy to suggest. The enforcement of all laws requiring railroads to fence their rights-of-way, and the enforcement of all laws against those who trespass on railroad property, will reduce the number of such accidents. The growth of public opinion is the best solvent. These accidents will cease

only when all our people become reasonably prudent, and until then, the death toll must proceed.

Mr. DUNCAN, of Indiana. Mr. President, I move the adoption of the report.

The PRESIDENT. Generally upon reports of as much consequence as this we have some discussion. Are you ready for the question?

Mr. THELEN, of California. Mr. President, although I observe that the report contains seven recommendations, for the purpose of securing uniformity of action by the various states of the Union, yet there is no specific recommendation in this report that the states adopt such uniform policy. I rise simply to inquire whether it is desirable to make these specific recommendations to the respective states?

Mr. DUNCAN, of Indiana. Mr. President, we have in process of preparation a proposed bill which we hope to submit in the form of a supplemental report before the adjournment of this Convention. However, the specific recommendations numbered 1 to 7, inclusive, are the recommendations of that joint meeting referred to in the report.

Mr. THORNE, of Iowa. Is it intended that they be the recommendations of the Association?

Mr. DUNCAN, of Indiana. Yes.

Mr. FUNK, of Illinois. I should like to ask what was the idea of the Committee as to who should provide the distant warning signs—the railroad company, the local highway commissioners, or the state? What agency is to provide those signs?

Mr. DUNCAN, of Indiana. Mr. President, we have had some diversity of opinion, which I consider unimportant. Ultimately the entire expense must fall on the people. My information is that the railroads have no objection to installing the distant approach warning signs, but so far as my information goes they are unwilling to assume the responsibility for the maintenance of the signs beyond the right-of-way. I think there will be no difficulty in securing the approval of the railroads to an act requiring them in the first place to defray the expense of installing the warning signs outside of the right-of-way.

Mr. HALL, of Nebraska. Mr. President, I do not know that a report adopted by this Association necessarily becomes binding upon the commissions of the different states. I do not know how far the reports which we have been adopting in the past have been considered as binding. I think I raised that question once before on this floor. But if we are to take the report in all seriousness, and if each commission is to undertake to carry out the recommendations of this report, I am frank to say that the point of the greatest importance mentioned in the report is the one that is least touched upon. I am glad that it is referred to, and a direct statement made in regard to it. Whether I may be right or not, I have deepseated convictions that the first thing

to be considered as to grade crossings is the condition of the crossings themselves. I wish some of the members of the Colorado Commission were present.

Mr. KENDALL, of Colorado. I am present.

Mr. HALL, of Nebraska. I have read their report on grade crossings carefully, and it is my pleasure to state that just a few days before I received that report I wrote an order which was almost identically in accordance with that report, in regard to the condition of a certain crossing. I ask you for a moment to consider the case of a man driving a Ford automobile over a railroad crossing. I mention the Ford, because it is the most popular means of highway transportation of passengers known to the people of the United States. And by the way, one of the most serious grade crossing accidents that has happened for years in the state of Nebraska was caused by a Ford automobile being struck by a passenger train and the occupants killed. This happened because the automobile was stalled on the crossing, with the engine killed. It was no fault of the machine, and possibly no fault of the driver, but the crossing was rough. The section men had thrown up some heavy chunks of dirt, which had frozen. The driver of the automobile had to bring the machine down to a slow rate of progress, the rain had washed away the dirt on both sides of the boards, leaving a drop on both sides of the track, and in undertaking to go over the track, the driver killed his engine. The view of the engineer was obstructed until he was right at the crossing. The automobile was closed in, the curtains up, and nobody got out of it. If that approach had been properly cared for, if the planking of the crossing had been properly cared for, that accident would not have happened.

As I remember the report of the Colorado Commission, it provided that the space between the rails and on either side of the rails shall be planked, smooth and level with the rails, to a width of twenty feet. Then it recommended that the public highway on each side be graded to the level of the plank crossing for a distance of twenty feet back. There are several good features in that. First of all, if the highway is graded to the level of the board, the dirt does not wash away and leave a drop-off on either side. In the second place, the automobile makes the grade and gets on to the level, and if the driver does not kill his engine before he does that, he will have no trouble. The machine will roll right over the crossing of its own momentum.

Consider for a moment that when an automobile is stalled on the track, and the driver must get out and crank his engine, if it takes him only a minute or two to crank his machine and get back, a passenger train running thirty miles an hour, coming around a curve or out from behind buildings or other obstructions, will run from half a mile to a mile while the cranking operation is in progress, and the locomotive will strike the automobile unless the

engineer is able to stop the locomotive after he discovers that the automobile is stalled.

I am making these remarks simply because I am convinced that the condition of the crossing itself is more vital than any other element of the question we are discussing.

Lights at crossings where the view may be obstructed, may in some instances confuse the automobile driver. There are people who want electric lights placed at highway crossings. It seems to me that an electric light placed at a highway crossing may fool the automobile driver, because his machine is moving at a high rate of speed, possibly, and it looks to him as if the crossing light itself may be moving; while if there were no lights at the crossing, the driver of the automobile could more readily see the lights of the train. Therefore I am not quite sure that a light at a railroad crossing is of any benefit to the man who is driving the vehicle, to prevent him from being hit by the train.

I heartily agree in regard to proper notices so placed as to notify the public of the proximity of railroad crossings.

I am not sure whether there is in that report of the Colorado Commission any expression in regard to strangers in the community. Anyway I have the idea that the man who is a stranger in the community, who has never gone over the road before, is the man who is not apt to get hit. It is the man who is deeply engrossed in his own affairs, and who is going over a road that he is accustomed to travel every day, which has become commonplace to him, so that he goes along without paying attention to his surroundings, who is more likely to be struck than is the stranger, to whom the surroundings are new, who is observing the conditions about him, and so is able to protect himself. At least I have gotten the idea from some reports that more accidents happen to people who are entirely familiar with their surroundings than to strangers in the community. I may be wrong about that.

We know that in Nebraska the question of eliminating grade crossings is beyond our reach. There are comparatively few crossings that could be separated without a most enormous expense, all of which ultimately, directly or indirectly, the public of course would have to pay. Flagmen could be maintained much more economically, and on the whole I am inclined to think just as efficiently. I venture to say that if adequate overhead crossings were provided in the country, as fine as any in a city, there is not a farmer in the state of Nebraska who would drive over the overhead crossing, if it were possible for him to drive across under the viaduct on a grade crossing which he knew was there. He would not undertake to pull his heavy load up over the overhead crossing with his team. I know there are many places where overhead crossings may be constructed at a minimum of expense. There are other places where undercrossings may be put

in; and of course that would be satisfactory, but those places are very few.

I am profoundly interested in the subject, although I am not quite as well prepared to discuss it as I would like to be. I am extremely interested, because there are so many such accidents happening, not only in Nebraska but all over the United States. I am inclined to think that in case of such an accident, it is usually the fault of the automobile driver, or the pedestrian, or the man driving the team; but we are confronted not by theories, but by conditions; and if it is necessary to build stone walls to keep men off the railroad tracks, I suppose that is the thing to do, to save the lives of the many who are now getting killed. The question is how to do it in the most practical way, at the minimum expense.

Mr. WALKER, of New York. Mr. President, as a member of the Committee I have been very much interested in what Commissioner Hall has said. I know I express the views of the Committee when I say that we would like to have a general discussion of this report, and as it is approaching one o'clock now, I suggest that we take a recess, and resume the discussion after the recess.

Mr. HALL, of Nebraska. One further remark. I was afraid no one was going to say anything on the report, and I made my remarks hoping that they would bring about a discussion of the subject, because I believe it ought to be discussed by every member of the Association. I wish to state that my remarks were not made in opposition to the report.

Mr. SHAW, of Missouri. Mr. President, as I understood the question asked by Commissioner Thelen of California, and the reply of Commissioner Duncan who read the report, he said he intended to bring in a supplemental report making specific recommendations.

The PRESIDENT. Proposing a bill.

Mr. SHAW, of Missouri. If that is true, it appears to me that the better method of procedure would be to defer further discussion until the bill is brought in, and then the two matters can be disposed of at once. I offer that as a suggestion.

Mr. DUNCAN, of Indiana. We are not sure that we can agree among ourselves on a bill. The different states might select different methods of carrying out the recommendations of the report. I have just one other suggestion to make. Mr. McCrea is Chairman of a committee appointed by the American Railway Association. He has taken a very active interest in this grade crossing question. He is very well informed on the subject, and he is in the city. It was suggested by one of the Commissioners here present that it would be wise perhaps to have him address this Convention. In order to test the judgment of the Convention I move that Mr. McCrea be requested to address the Convention on the subject of grade crossings.

Mr. NILES, of New Hampshire. Mr. President, I second that and I will say that the New England commissions have met twice in Boston in conference with the Committee of the American Railway Association of which Mr. McCrea is President. He is intensely interested in the subject. He has been putting in a very large part of his time in securing information upon it, and I think he knows more about it than any other railway operating man in America. I think it would be of great benefit to us all to hear from him.

Mr. THORNE, of Iowa. I am in accord with the sentiments expressed, but I would like to suggest to your minds a possible reason why Mr. McCrea has become so intensely interested in the subject. In New Jersey they passed a law, while a distinguished official of our Federal Government was Governor of that State, requiring the railroads at their own expense to put in overhead or undergrade crossings, one for every thirty miles of track every year, and that is said to cost the Pennsylvania Railroad many millions of dollars, or will before it is finished. In other words, one of our states is compelling the railroads to remove the grade crossings. It is no wonder that Mr. McCrea is interested in the subject before that disease spreads any further.

Mr. NILES, of New Hampshire. He does not operate in New Jersey. He is General Manager of the Long Island Railroad.

Mr. THORNE, of Iowa. I thought you referred to Mr. McCrea of the Pennsylvania Railroad.

Mr. NILES, of New Hampshire. No.

Mr. THORNE, of Iowa. Then I withdraw my comment.

The PRESIDENT. Gentlemen, it seems to me this would establish rather a dangerous precedent. Of course it is for the Association to decide the motion; but if we should invite all of the gentlemen representing railway interests to speak to us, our time would be taken up with their suggestions, and we would have no time to talk with one another. We generally dispose of matters of this kind by asking these gentlemen to present their views to the Committee, and let some member of that committee bring the matter to the Association. I do not believe in shutting off the light, but I just want you to understand what you are doing; and if you adopt a resolution giving the floor to every railroad representative who wants to make a speech to you, you will spend your whole time in listening to them, and have no chance to listen to one another. You will have to determine which will be the most interesting and instructive.

Mr. DUNCAN, of Indiana. I want to say that Mr. McCrea is not requesting this. The suggestion was made to me by Mr. Thelen of California.

The PRESIDENT. You have heard the motion that Mr. McCrea be requested to address the Convention on the subject of this report. Are you ready for the question?

The motion was rejected.

## TIME AND PLACE OF NEXT MEETING.

**THE PRESIDENT.** I am required to appoint at this morning session a committee on time and place for the next meeting. I appoint Mr. Niles of New Hampshire, Mr. Thelen of California, Mr. Candler of Georgia, Mr. Stutsman of North Dakota and Mr. Dunn of Florida.

## COMPLIMENTARY RESOLUTIONS.

**THE PRESIDENT.** There is another committee which I have to appoint this morning, the Committee on Complimentary Resolutions. I am going to ask Mr. Kinkel of Kansas, Mr. Anderson of North Dakota, and Mr. Funk of Illinois to attend to that matter for us.

Mr. NILES, of New Hampshire. I understand that the Committee on Time and Place is obliged to give notice at noon of the first day, of the time of its first meeting. The committee on Time and Place will meet in this room at the close of this afternoon's session.

Mr. WALKER, of New York. I move that we take a recess until 2:30 p. m.

The motion was agreed to.

Whereupon, at 12:58 p. m., a recess was taken until 2:30 p. m.

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## AFTERNOON SESSION.

The Convention resumed its session at 2 o'clock P. M.

**THE PRESIDENT.** The unfinished business is the report of the Committee on Grade Crossings and Trespassing on Railroads.

Mr. ALEXANDER, of Wisconsin. Mr. President, there are one or two things that have occurred to me, that have been touched upon in this report. I agree thoroughly with the committee which made this report. There are a few things that may be of interest to state here, and one of them is the width of a roadway at a highway crossing. In specifying the changes which should be made at crossings we have very often found that a crossing which is dangerous may be made much safer by widening it so as to give the autoist an opportunity to turn to one side or the other in case he runs his car too near the track. The matter of a level space for a certain number of feet on either side of the track has been touched upon this morning, and I will say that in a great many of our orders in Wisconsin we have required a certain space on either side to be made level, and we have found that in many cases that has made crossings reasonably safe that were dangerous before the change was made.



Something is said in the report about bell signals. It seems to me that now, when the automobile has superseded the older means of highway transportation, some other form of crossing protection than the bell signal is needed, and that can be had very well by some type of movable signal, something that can be seen for several hundred feet before the crossing is reached.

During stormy weather, or at crossings in the vicinity of shops or factories, a bell cannot very well be heard, while a moving signal can always be seen. We have found that many crossings which we could not very well protect with bells have been adequately protected by some form of moving signal.

Mr. DUNCAN, of Indiana. Mr. President, with a view to getting effective action, we have concluded to offer this resolution:

RESOLVED, That the National Association of Railway Commissioners approve the seven recommendations for the protection of grade crossings made in the report of the Committee on Grade Crossings and Trespassing on Railroads, just submitted, and recommend to the several State Commissions the submission to the respective Legislatures for passage, of a bill or bills for such enactments as may be necessary to put said Committee's recommendations into effect, to the end that, pending the separation of grades which we regard as the final objective, uniform and effective protection may be provided at grade crossings in the several states.

We offer that resolution.

Mr. HIGGINS, of Connecticut. Mr. President, I think the construction of the highways at grade crossings, in such a manner as to promote safety, is a matter which the several commissions having to do with railroad construction ought to consider well. I think, however, that signals and signs should be standardized, and I think the most important part of this report is that which relates to the adoption of something that will secure standard signs for the protection and warning of travelers on the highway, at all grade crossings throughout the United States, if possible.

As to the construction of the highway at the crossings, the surroundings of a particular crossing may have their influence, and may differentiate the method of construction; but I think we may well adopt the recommendations relative to the signals which are made by this committee. In that connection it seems to me it would be advisable, if possible, that this Convention adopt a standard or approved form of legislation to be presented by the commissions to the legislatures of their several states, relative to that particular matter. Of course there is the possibility, even if we adopt a measure of this kind, that the legislatures of the states will adopt something different. I believe we should first agree upon the question of the warning sign, first as to its particular style; second as to its location; and third, as to who shall place those signs in the proper places. My idea is that the several railroad commissioners or utility commissioners, operating jointly with the highway commissioners, are the ones who should do that. I favor

the adoption of these recommendations, particularly as applicable to standard signs.

Mr. THOMPSON, of Illinois. The question arises in my mind whether the recommendations go far enough, and whether the Committee ought not to have provided the form of bill that should be presented to the various legislatures for their enactment. If that could be done, there would be more certainty of uniformity of action. I take it that this is directed to obtain, if possible, from the various legislatures of the different states, uniformity of action with reference to this subject. I presume the Committee has considered that.

Mr. WALKER, of New York. Mr. President, the Committee on Grade Crossings has considered, and very seriously considered, the submission of the draft of a bill to this Convention, with the recommendation that that bill be sent to the several state commissions, and by them transmitted to their legislatures; but there are many questions that we decided each state would like to decide for itself, for instance in regard to the assessment of the expense of putting up the signs, and the assessment of the cost of maintenance, so I doubt whether this Convention could adopt recommendations that would be acceptable to all of the states.

Mr. THOMPSON, of Illinois. Could not a bill be so framed that it would apply generally, leaving those minor things to be threshed out and enacted by the several legislatures? Could we not incorporate in the proposed bill the essential things, leaving the minor details to be worked out by the various state legislatures?

Mr. WALKER, of New York. We thought that if we adopt this resolution, and transmit this report to the different states, then the states will be at perfect liberty to frame such legislation as they see fit, to carry these recommendations into effect.

Mr. PELL, of North Carolina. I feel that most of the commissions are like our commission, composed of lazy men, who do not want to study this question for themselves especially; and yet men who would be glad to present to their state legislatures a bill framed by those who have a thorough knowledge of the subject. I believe a great many of the commissions would be slow to frame an act that would meet all the requirements; but I believe that if this Committee would frame an act, after due deliberation, containing everything that ought to be placed in the act, such as the bearing of the expense, and all that, and if they would send this proposed act to the several commissions to be presented to their legislatures, then the legislative committees might recommend amendments to that act, and the legislatures of the several states pass amendments to meet the different situations; but even though they should pass some amendments, nevertheless the result would be greater uniformity throughout the whole country, and I believe it is the best plan for this Committee to draft that

bill and submit it to the several states, as has been suggested, leaving them to amend it as they see fit.

Mr. FUNK, of Illinois. I should like to ask Mr. Duncan, the Chairman of the Committee, what was the attitude of the representative of the American Railway Association at the conference which was held in Chicago the latter part of June? Here is a recommendation, as I understand it, concurred in by a committee of this Association and by a committee of the American Railway Association. It has occurred to me that perhaps several of these seven recommendations might be put into effect without waiting for any bill. For example, I take it that in Illinois perhaps five of the rules could be made effective by a conference ruling, or a general order of our Commission. I am not objecting to the framing of a bill, but I would like to ask Mr. Duncan whether it is the purpose of the American Railway Association to go ahead upon its own initiative, and recommend to its members that they proceed to carry into effect the recommendations of the joint committee. Its Committee joins in these recommendations?

Mr. DUNCAN, of Indiana. Mr. President, the various railroads, as represented by the gentlemen who met with our Committee, have agreed practically to put into effect these signals that we mentioned. We have attached to our report here a sample of the sign that the watchmen at the street crossings shall carry. We have a blue-print of it here, which you can see, giving its dimensions and appearance. Here also is the form of sign or warning signal that is to be placed three hundred feet from the crossing.

The railroads are anxious to adopt these signals uniformly all over the country.

Now the question of putting the crossings in such condition that they will not impede a vehicle attempting to cross was suggested by our Committee. It was our view that that was one of the most important things to be taken into consideration. They have agreed to that, and they have agreed to put these crossings in such condition that an automobile or any other vehicle will have an unimpeded way across the track. The view of this Committee was that it needed legislation all over the country to make the whole thing uniform, to standardize these approach signals and crossing signals, and, as far as possible, the method of crossing the railroad itself. I do not think however that they will put them in unless this Convention recommends to the various states the adoption of such legislation as will make these things effective.

It was stated at our conference in Chicago by Mr. McCrea that the railroads were willing to pay the initial expense of the approach warning signs, that is the signs that are to be not less than three hundred feet from the railroad track. They are not willing to maintain these signs after they are once established. Their argument in brief was this, that they did not care for the initial expense; they were willing to pay that, but that as the sign was off

their right-of-way, and necessarily in order to be useful, it must face away from their right-of-way, and from their people at work there as section hands or trainmen, it would be a matter of great difficulty and considerable expense for them to be continually watching to see whether these signs were in actual working order or not. And it is the idea of this Committee that the maintenance of the signs which are off the property of the railroad should be at public expense. I am rather persuaded that that is the correct view of it. I think the law ought to provide that these signs be established by the municipal government, whatever it may be, town, county, city, borough or district, and that the railroads be required to pay whatever it costs to establish the signs in the first instance, and then that the railroad's duty end so far as that sign is concerned. Of course the railroad signs, at the right-of-way are to be established and maintained by the railroads, and they of course are to keep their crossings in this condition that we suggest in the report. That is the view of the railroads, as I understand it.

Mr. FUNK, of Illinois. I am under the impression that if the recommendations of the joint committee are adopted by this association, then the railroads themselves will go ahead as to some of those rules and put them into effect, as for instance the matter of painting the crossing gates.

Mr. DUNCAN, of Indiana. They are doing that now.

Mr. FUNK, of Illinois. Very few of them in our state are doing it. I know of but one railroad that is doing it. The substituting of a disc for the flag that the watchman carries is something that should be done by the railroads themselves, and if we here ratify the action of our Committee in Chicago, that will be notice to the American Railway Association that we accept the recommendations of that joint committee, and a number of these desirable rules can go into effect at once, without waiting for legislative action.

Mr. WALKER, of New York. My impression, from what Mr. McCrea and other representatives of the railroads told me, is that if this action is ratified by this Convention, the railroads will go ahead and paint their crossing gates with the black stripes, and provide these white discs sixteen inches in diameter for use in place of the watchmen's flags, and that they will maintain the signs now erected upon their rights-of-way.

Mr. THORNE, of Iowa. Personally I have not heard all of the discussion upon this, and I wish to say just a word or two. It seems to me that we are treading on very dangerous ground. Whatever is done in the way of requirements of the automobile driver will be used as a very important element of proof in every damage case that is brought within the bounds of the state that passes such a law. I understood at one time the Committee of Railroad Representatives desired to have a rule prescribed that the driver of the automobile should stop at every crossing, in the same way that he is now required to slow up his speed.

As to the public paying for the maintenance of that sign at some distance from the track, that is assuming a part of the burden of the railroads. Possibly it is all right for us to assume some of that burden, especially when the sign is off the right-of-way. If this Committee contemplates suggesting that the public share the expense of the elimination of grade crossings, I think it very important that it should include a provision that no part of said expense shall be included in the value of the railway property upon which the company shall be entitled to a return. In the state of Iowa the railroad commission has been authorized to determine the portion of the expense that shall be borne by the public authorities, whether county, city or state, and the portion to be borne by the railway company; but it is further provided that no part of the expense borne by the city, state or county shall be included in the value upon which the company is entitled to a return. That may look small at this time, but in the course of thirty years, when a very large number of crossings are changed, each one of them costing a very substantial sum, if the city or state bears one-half or one-third of that expense, it is going to assume large proportions.

I call special attention to the fact that in England the railway companies did not receive any financial assistance from the public, and they were required to construct their railroads complete, instead of putting two streaks of rust across the country and then making the public bear the expense of creating a railroad out of that. In England they were required to have the railroad adequately protected, at their own expense. I hold in my hand a little book by Mr. Edwin H. Pratt, who is the author of a large number of works on railway matters, and who is a correspondent for the London Times. His books have been published by John Murray & Company, a standard publication firm of England. Mr. Pratt says:

"When from this survey we pass on to ask what successive British Governments have done to render financial or other practical assistance to private companies in the construction and operation of railways in Great Britain (as distinct from Ireland) the reply is—nothing whatever! There has been no guarantee of interest; there have been no loans, subsidies, bonuses or free grants of land for railway purposes; there has not even been any lightening of the railroad burdens and requirements in directions in which sympathetic help and encouragement could have been given without even encroaching on the public funds or making any pretense of generosity."

I call attention to what New Jersey has done. In thirty years she will have practically eliminated grade crossings, not at the expense of the public, but at the expense of the railway companies of that state. I do not urge that as a policy to be adopted in other states. Our Commission has heretofore required a division of the expense; but the fact that England did not pursue that policy, and the fact that New Jersey is not pursuing that policy, and that the carriers are required to construct their own property, are facts that should be taken into consideration. I merely suggest these

things at this time in view of the fact that some gentlemen here propose to have you bring forward some act for consideration and passage by the various state legislatures.

Mr. CARR, of New York. As I understand it, the Committee on Grade Crossings, in conjunction with the Committee representing the railroads, have already made their recommendations to the various state commissions, which recommendations are embodied in this report, so that the matter is already before the state commissions. The Committee are here seeking the approval of the action which they have taken. I therefore move, as an amendment to the resolution which has been offered, that the report of the Committee be adopted.

The PRESIDENT. Mr. Thorne, while you were out of the room this resolution was offered by the Committee:

"RESOLVED, That the National Association of Railway Commissioners approve the seven recommendataions for the protection of grade crossings made in the report of the Committee on Grade Crossings and Trespassing on Railroads, just submitted, and recommend to the several State Commissions the submission to the respective Legislatures for passage of a bill or bills for such enactments as may be necessary to put said Committee's recommendations into effect, to the end that, pending the separation of grades, which we regard as the final objective, uniform and effective protection may be provided at grade crossings in the several States."

That resolution has been offered by the Committee. I understand that Mr. Carr of New York proposes as a substitute that this Convention approve and adopt the report of the Committee.

Mr. HALL, of Nebraska. Mr. President, I have spoken once on this subject. I do not want to seem to oppose any recommendation that has been made here, but the sole purpose of alarm bells or signals is to notify automobile drivers, pedestrians, or people driving teams on a public highway that there is a railroad crossing here. If a person's attention is directed to that fact, then the sole purpose of the sign or the bell has been accomplished.

One of the main thoroughfares in the little city of Clinton, Nebraska, is crossed by the Rock Island railroad track, at a point where, because of its location and because of the splendid pavement, a great many automobiles pass up and down. I stopped on the north side of the Rock Island crossing the other evening while the alarm bells were ringing. They were audible for at least a block. I counted between forty and fifty automobiles several bicycles and motorcycles, and a great many people on foot, who crossed over that railroad track while those bells were ringing, and not one of them stopped. A little boy on a bicycle was kind enough to say to me, "Oh, Mister, that bell is ringing, but it is for a switch engine and some freight cars coming away down there. You have got plenty of time to cross."

About a month ago, or a little more, I walked down one of the main thoroughfares in Kearney, Nebraska, which crosses the

double tracks of the Union Pacific. A freight train was coming from the west. A flagman was frantically flagging one of the leading business men, who was driving an automobile. The business man saw that he could cross the track in plenty of time ahead of the freight train, and he forced the flagman to step aside, and drove his machine onto the crossing. The flagman was so exasperated that he called my attention to it and said, "Mister, did you see that?" I said, "Yes." He said, "If a train had been coming the other way, on the west bound track, that automobile might have been hit; but I can't stop them."

Now what I am leading up to is this, that a sign placed three hundred feet away, around a curve or back on the road may notify the automobile driver or pedestrian that there is a railroad track ahead. So would the alarm bell at the edge of the track, or a proper sign there, but the automobile driver would not stop if he saw that he had plenty of time to get across the track. All I see in the sign is simply a notice to the man, calling his attention to the fact that there is a railroad crossing there, and a sign placed three hundred feet back from the track will not accomplish any more than one right up at the track. It is the notice to be delivered to the man who is driving, and then if he takes his chances because he does not happen to see a train coming, I do not know what more the Commission can do. I do not know what more the public can do to protect him, unless you have an automatic drop gate. Of course all of you who have talked about gates know that an automatic drop gate cannot be used at public crossings, and you know the reason, although many people doubtless have spoken to you about putting in automatic drop gates at railroad crossings. But when you call their attention to the impracticable part of it, they immediately resign their position. If, however, signs are to be placed on public highways back from the right-of-way, if the public feels the necessity of such signs, and that they will be of greater benefit, I am rather of the opinion that the public ought to pay for maintaining them. I do not believe that ought to be mixed up with the duties of the carriers, for a good many reasons. I do believe, however, that we should adopt uniform signals, uniform signs, and uniform flags. I think that is a great step in the right direction.

In the state of Nebraska we are not anywhere near overhead crossings yet. It might come as a surprise to a good many people if I should say that I would not be in favor of steel and cement overhead crossings at all of the crossings in Nebraska if somebody would make me a present of them, because it would be impossible for a heavily loaded wagon drawn by a team to go over many of them.

Mr. THOMPSON, of Illinois. Of course many of those recommendations could be put in effect by conference rulings or general orders of the state commissions. The Illinois Commission can do

that, and I take it that all of the commissions have the same power that we have with reference to conference rulings. May we not as state commissions pass a resolution embodying in a general order the recommendations of this Committee? As I understand, the railroad companies have already agreed to them. Why can we not do that?

Mr. THORNE, of Iowa. Mr. Carr's motion does not contemplate legislation.

Mr. THOMPSON, of Illinois. Why cannot these things be done by the state commissions without legislation? If these things are found by the Committee to be reasonable and necessary, and are concurred in also by those representing the railways, why cannot those things be put in operation at once, uniformly, by the joint action of these representative bodies?

Mr. THORNE, of Iowa. If I am correct, the motion which the President read contemplates legislation, but Mr. Carr's motion simply recommended the adoption of the report of the Committee.

Mr. THOMPSON, of Illinois. Mr. Carr's motion was to adopt the resolution, was it not?

Mr. THELEN, of California. I agree with Judge Thompson, that most of these results could be accomplished without legislation.

Mr. WALKER, of New York. In submitting this resolution recommending legislation, the idea was that in those states where the commissions have the power to put it into effect, of course, legislation will be unnecessary. That was one reason why we did not submit a draft of a bill to this Convention. We have left it to the different state commissions to determine whether they shall or shall not present a bill for their legislatures to pass. In other words, I would urge you to pass the original resolution, rather than Mr. Carr's substitute motion, because it will have a greater effect upon the several states, and will bring the matter more directly and more forcibly to their attention.

Mr. HIGGINS, of Connecticut. Without the passage of legislation the Commission cannot compel the erection of a sign off the railroad company's right-of-way, and cannot compel the public to maintain that sign. It seems to me that provision would be absolutely without any force or effect unless you have legislation.

Mr. PELL, of North Carolina. I did not happen to be in the room at the time the report was read, and I have not had time to read it. I should like to know if there is any recommendation as to who shall maintain these signs?

Mr. DUNCAN, of Indiana. No.

Mr. PELL, of North Carolina. I feel that the reasons stated by the railroads to our Committee, as to why they do not care to maintain these signs, is not their real reason. Their real reason, and I think it is a good one, is that they do not propose to have the doctrine used against them of negligence *per se* in every litigation brought under this statute. They do not propose to be charged



with negligence *per se* when they fail to maintain these signs, and I do not feel that they ought to be placed in that attitude. When a mischievous boy comes along and destroys one of these signs, I think that ought to relieve the railroad of the burden of this doctrine of negligence *per se*, but under the decisions of course that cannot be done, and the only way I see is for the municipality itself to maintain these signs. Since there is no recommendation in this report in regard to the maintenance of these signs, I second the motion of Mr. Carr of New York, in place of the original resolution.

The PRESIDENT. The question is upon the substitute offered by Mr. Carr of New York, to adopt the report and the recommendations contained therein.

The question being taken, on a rising vote, the substitute was rejected, 14 ayes, 23 noes.

The PRESIDENT. The substitute is lost. The question is upon the adoption of the resolution offered by the Committee.

The resolution was agreed to.

### BUREAU OF STANDARDS.

The PRESIDENT. I have here a letter from the Bureau of Standards, which I will ask Mr. Walker to read.

The Assistant Secretary read the following letter:

"DEPARTMENT OF COMMERCE,  
"BUREAU OF STANDARDS.

"Washington, November 14, 1916.

"National Ass'n. of Railway Commissioners,  
"c/o Interstate Commerce Commission,  
"1317 F Street, N. W.,  
"Washington, D. C.

"Gentlemen:

"While in this annual convention you are meeting as railroad commissioners and considering only subjects related to railroad operation, many of the members are also interested in problems affecting public utilities of various other kinds. The investigations of the Bureau of Standards into various subjects affecting public utility operation are more or less familiar to you, including studies of adequacy and safety of electric, gas, and street railway service, and in all these investigations we have benefited by the cooperation of the various state commissions in their capacity as public utility commissions.

"The Bureau of Standards extends a cordial invitation to members and guests whose time permits, to visit the Bureau of Standards, either individually or in groups, at Connecticut Avenue and Pierce Mill Road, to see some of the work being carried on in the Bureau's laboratories, which are the largest government standardizing laboratories in the world, and to take up with the proper members of the Bureau staff any matters in connection with public utilities where the investigations or facilities of the Bureau can be

made of service to you. The street cars, marked Chevy Chase Lake, start from the corner of Fifteenth Street and New York Avenue near the Treasury Building every twelve minutes. Members of the Bureau staff are prepared to show individuals or parties through the Bureau.

"Respectfully,

"W. F. HILLEBRAND,  
"Acting Director."

The PRESIDENT. What action will the Convention take upon this invitation?

Mr. CARR, of New York. I move that the invitation be accepted. The motion was agreed to.

### SAFETY OF RAILROAD OPERATION.

The PRESIDENT. I now call for the report of the Committee on Safety of Railroad Operation. The Chairman of that Committee is Mr. McChord of the Interstate Commerce Commission. He is absent, conducting an investigation of car shortage. The ranking member of the Committee present is Mr. Dunn of Florida. He has requested me to ask that Mr. Belknap of the Interstate Commerce Commission be permitted to present a summary of that report to the Convention, and without objection Mr. Belknap will do so.

Mr. THORNE, of Iowa. It may be of interest to the members to know that Mr. Belknap is Chief of the Division of Safety of the Interstate Commerce Commission.

Mr. Belknap presented the following report of the Committee.

By the amended constitution of this Association, adopted at its last annual convention, there was a rearrangement and consolidation of standing committees; certain committees were abolished, and the subjects dealt with by them were assigned to other committees. In this rearrangement the matters formerly dealt with by the Committee on Rails and Equipment and the Committee on Safety Appliances were assigned to this Committee. It will, of course, be recognized that the subject of Safety of Railroad Operation is much broader than the subjects assigned to the former committees. It is so broad, indeed, that it cannot possibly be adequately covered within the limits of a single report. Your Committee has, therefore, selected for treatment in the present report, only the most striking features of the question of railroad safety, as they have presented themselves for observation in connection with comparatively recent railroad accidents, leaving other phases of the general subject to be dealt with in future reports.

Safety of railroad operation involves the subject of the safe use of materials of the track and equipment jointly with proper rules, supervision, and care in all of those functions which are performed

by the personnel. The selection of engineering materials admits of greater deliberation than is at all times possible in the acts of individuals when the latter are called upon to meet the varying exigencies which are unavoidably associated with railway movements. It would, therefore, be logical to expect that the failures of materials would ordinarily be less than man failures so-called, a result which, from certain points of view, does not appear to be fully realized.

A portion of this report will be devoted to a review of some of the causes which contribute toward the failure of materials. Another portion will deal with railway signals and the problems involved in their use.

There is annually presented an extended record of failures of materials used in track construction and of parts of the equipment on which safety depends. These failures represent materials which have not yet reached that stage of excellence which it is hoped they may eventually attain, or perhaps they have not been used in the most judicious manner and failed in consequence thereof.

### RAILS.

The annual report of rail failures is a voluminous document,—a statistical account of the most numerous type of failure in engineering affairs. Fortunately not all of these failures are attended with loss of life or personal injuries; in fact, but few are so attended. There are, nevertheless, potential possibilities in each instance which constitute a menace to life and property.

Many of the failed rails are discovered and the injured members replaced by sound ones before accidents occur, but such circumstances must be regarded as more or less fortuitous, upon which no reliance can be placed as means of averting accidents.

In considering the matter of safety of operation with respect to the use of engineering materials, the subject divides itself into two parts: first, that which pertains to the proper selection of the materials, and, second, the ultimate use to which the materials admit of being subjected. Specifications governing the primitive properties of the materials, and their inspection, are technical matters which come within the scope of the duties of the engineering staff of each road. There are, of course, fixed, unyielding limitations to the physical properties of materials of construction, as the metallurgical art is now understood, and such limitations must be reckoned with. Constant efforts are being made by metallurgists to discover new alloys of iron and steel which shall have superior physical properties to those of current manufacture. However promising they may be, new alloys, nevertheless, bring with them many unsolved problems. Primitive properties are not always indexical or proportional to those which contribute to endurance under service conditions; and prudence

is therefore demanded in the adoption of new materials or modifications in methods of use of those which are currently available.

Practically any grade of steel desired can be supplied by the steel manufactures, from the softest to the hardest metal. Concurrence of opinion has fixed upon certain grades of steel as being suitable for rails, controlled chiefly by chemical composition, and tests are made to demonstrate whether the finished product is structurally sound.

In a strict sense, structural soundness is difficult to attain in a steel casting, of which a rail ingot is an example. Furthermore, some variation in the chemical composition of the steel may be expected, in different parts of the ingot. Structural unsoundness takes the form of laminated, streaky metal, and, to judge from the manner of failure of rails, this is a feature of more vital importance than variations commonly met with in chemical composition; that is, segregated metal, per se, is merely another grade of steel merging into that of normal composition, and which may possess very desirable properties. It is not infrequently associated with streaky, laminated metal, and from this circumstance segregated steel receives adverse criticism, which may be somewhat misapplied, the real trouble being imperfectly welded blow holes or slag inclusions, which latter prevent welding of the steel across their courses.

Steel would be improved by the elimination of these sources of unsoundness, particularly for use where service conditions strain the metal in crosswise as well as in lengthwise directions. There is a limit, metallurgically speaking, within which the elimination of these undesirable features admits of being accomplished. When that limit has been reached, the conditions as they then exist must, obviously, be accepted and service stresses regulated accordingly. Whatever the state of the art of steel making may be, current conditions demand recognition, and the safe use of the material rests upon those properties which are known to be attainable in steel of current manufacture.

Certain details in the process of the manufacture of rails are still the subject of discussion. One feature pertains to the reheating of the metal, when in the bloom. Reheating at this stage, with a wash heat, or thorough soaking, facilitates rolling. In thin flanged sections the metal more readily fills the grooves of the rolls by reason of the higher temperature of the steel, with its increased plasticity. If perchance any surface decarburization occurs in the reheating furnace, the rail may in the drop test appear to possess greater toughness than normal to its chemical composition. This, however, is not to the advantage of the rail as regards durability against wear under track conditions.

Prominence has been given to the subject of reheated blooms in current discussion, which has left the impression in the minds of some that the development of transverse fissures would be obviated by their use. The appearance of transverse fissures which are being witnessed in rails made from reheated blooms appears to show the fallacy of this contention.

Reverting to the Report of the Committee on Rails and Equipment, presented at the Twenty-seventh Annual Convention of this Association, the explanation offered by the Division of Safety, of the Interstate Commerce Commission, respecting the formation of transverse fissures, was given. The explanation was, in brief, to the effect that this type of fracture is a fatigue fracture, modified by the presence of metal in a state of internal compression at the running surface of the head of the rail, which causes the fracture to have an interior origin, instead of starting at the most remote fibre from the neutral axis, the usual manner of development of this well known type of rupture.

In the finishing of rails during fabrication, the rate of cooling varies in different parts of the cross section. The head of the rail, when it emerges from the last pass of the rail mill, is hotter than the thinner parts of the web and base. A cambering device is used to give the rail such curvature as will compensate for this difference in temperature and allow the rail when cold to assume approximately a straight shape. Some final straightening is almost invariably necessary, however, in the cold rail, which is done by the process of gagging, so-called.

Gagging consists of bending the rail in reverse directions to the initial bends until the alignment is satisfactory. Of course, this involves bending the rail sufficiently to cause permanent sets in the metal, without doing which the rail would spring back to its original curved shape. Gagging is a common practice which has been performed on rails from their earliest period of manufacture. One author states that gagging tends to develop injurious strains in the web and the base of the rail. On the other hand, it has been claimed that gagging leads to the formation of transverse fissures, which develop in the head of the rail. Direct evidence of the imprint of the gag on the fractured surfaces of rails is held to be seen by some and denied by others.

That internal strains are introduced by gagging, or those which pre-existed are modified by this process, experimental results amply show. The subject of internal strains in rails, whether resulting from the process of fabrication or introduced by the action of the wheels on the heads of the rail when in service, appears to be one which has been very generally overlooked or neglected. The subject is a broad one, upon which recent accident reports of the Interstate Commerce Commission have in a measure treated.

Internal strains in rails, resulting from cooling at the time of fabrication, or due to subsequent mechanical work, have the same characteristics as those which accompany the direct loading of the steel. It is inferred, therefore, that the same consideration should be given them as direct stresses. If rails are to be limited to certain unit stresses, corresponding in manner to other examples of engineering work, then both the internal strains which are within the rails and the external forces which strain the metal from without must be jointly considered. The real measure of the stresses which affect the rail will be the algebraic sum of these two com-

ponents. When both components act in the same direction, rails are found to be subjected to stresses far in excess of other engineering examples of corresponding degree of importance.

If the unit stresses to which other engineering structures are subjected are as high as the strength of the materials properly permits, then considerations of safety should logically be directed to rails and a careful review made of current conditions.

The second consideration, concerning the ultimate use to which materials are subjected, the permissible stresses which may be put upon rails taken as an example, requires even more study than the defining of what the properties of the rail steel shall be. The suggestion has been made that lighter instead of heavier rail sections better adapt themselves for sustaining the wheel loads of modern equipment. Such a suggestion has been entertained by those high in authority, on the theory that the lighter rails possess greater flexibility and transfer the loads in a more satisfactory manner to the roadbed. This seems a departure from the mechanics of the case, in which the section modulus of the rail taken as a beam serves as a measure of its strength. Emanating from sources of authority, these suggestions deserve mention, which if they are sound should result in economy of material, but if fallacious are disquieting by reason of having received the sanction of high authorities.

Time, as such, is not a controlling factor in the life of a rail. Its life depends upon the service which it performs, in which weights of equipment and speeds of trains are important factors. The number of trains, indirectly involving the question of time, has an influence by increasing the number of times the rail is loaded. The magnitude of the loads and the number of times applied affect the lives of rails as well as all other classes of materials.

#### TRACK MAINTENANCE.

Attention is being given the subject, and efforts are being directed toward methods of construction which will impart to the track more of the properties of a permanent way than heretofore attained. Each element must in itself contribute toward this end. The materials of the ballast and subgrade are essentially enduring while the ties and rails are subject to deteriorating influences. Good track maintenance appreciably lengthens the life of the rail.

An innovation in the manner of securing the rails to the ties has been proposed and introduced in a limited number of cases. The flexibility of the rail is allowed to go unrestrained, within limits, in a vertical direction. Allowing the rail vertical play obviates the lifting of several hundred or even thousand pounds weight of ties by the wave motion of the rail, which accompanies the passage of a train. This might be called an innovation in theory

rather than in practice, since rigidity in the fastenings between the rail and the tie is not always realized. The proposed plan has to do with metallic and hard wood ties, where rigid connections have generally been undertaken. The vertical movement permitted allows the rail to rise a small amount independent of the tie, the gauge of the track being maintained by the fastenings and longitudinal movement prevented by anti-creepers. The rail is thus secured in two directions, while a limited movement is allowed in the third.

It is essential that the ties themselves shall not display bodily lateral movement. Examples of track have been witnessed in which there was sinuosity in its alignment, due to insufficient bond between the ties and the ballast. Decided flange wear took place alternately on one rail and then on the other by the ricochet movement of the trucks. This condition was shown on tangent track laid with metallic ties.

Within a very short distance, measured in a downward direction, a remarkable change occurs in the unit pressures involved in the track and roadbed. At the surface of contact between the wheel and the rail, an intensity of pressure amounting to many thousand pounds per square inch prevails, which a few inches below drops to only hundreds of pounds in parts of the subgrade. The problem of making a permanent construction with the materials employed, and under the conditions which are presented in service, is one which presents many obstacles in its accomplishment.

Elastic properties are displayed by each of the materials of construction. The rail is the most rigid member in the track, after which, next in order, comes the material of the ballast, and then the tie, if the latter is made of wood. The ballast and the subgrade display different degrees of rigidity according to the tamping of the ties and the general consolidation of the earth work.

The elasticity of the roadbed is manifested by a depressed area enclosing the train. This crater accompanies the train in its movements along the track. Its depth depends upon the weight of the train, being greatest in the vicinity of the engine. The periphery of the affected zone is frequently a number of yards away from the train.

The relations between the fibre stresses in the rails and the wheel loads are modified by the conditions which have been enumerated. When their influences are vague or unknown a state of uncertainty must exist in respect to the margin in strength residing in the rail, between its working loads and such as would lead to ultimate failure. Attaining a state of structural soundness in the steel aids in securing a satisfactory margin in strength, but the larger part of the problem lies in the direction of ascertaining what the track conditions consist of and controlling them. There is, moreover, a wide gap between the information furnished by the prescribed tests for acceptance of steel rails and the information which reliably indicates the ability of the rails to successfully

meet the conditions of service. No stronger reasons are presented in the employment of structural materials for the possession of exact knowledge than those which have to do with steel rails in their use and serviceability.

#### AXLES.

There are points of resemblance between rails and axles. Each is exposed in service to alternate loads of tension and compression. A larger number of repetitions of load are required to be sustained by axles than by rails, and it is imperative that lower fibre stresses prevail in axles in consequence thereof. The life of an axle, stated in terms of the number of repetitions of loadings, should be in the hundreds of millions. To attain this limit of endurance without danger of rupture, comparatively low fibre stresses must be employed. Axles are not immune to exceptional stresses, and static loads are very generally exceeded by those of service. While it is recognized that such is the case, still an exact definition of the magnitude of the stresses encountered in the track hardly admits of being made. The problem of providing adequate strength and safety in axles, consistent with what appear to be reasonable dimensions, presents unusual difficulties.

Axles are affected by shocks. There are no springs to soften the effects of low joints, frogs, and oscillations of the trucks. Local strains are intensified which must be met by the display of elastic action of the metal, to provide for which constitutes the essence of the axle problem. It was considered at one time that the use of metal possessing great primitive toughness best met the requirements of an axle. In cases of derailment such metal displays toughness and the axles bend without fracture. Owing to the low tensile properties which accompany the more ductile grades of steel, having special reference to the elastic limit, such axles lacked in durability, and fatigue fractures occurred in which there was no display of the primitive toughness which the metal originally showed. Better results followed the use of medium grades of steel.

Occasional, intermittent stresses, exceeding the ordinary loads, cause the development of incipient rupture at the periphery of the axle, which in time penetrates deeper into the metal, weakening the axle until the fracture is completed by its ordinary load. A comparison of the strength of the axle, based upon its primitive diameter and that to which the intact metal is finally reduced by progressive, fatigue fractures, furnishes a measure of the range between the ordinary and the extraordinary loads which it endured.

An increase in the load when the axle is stressed very near its elastic limit is attended with a rapid reduction in the number of loads it will endure before rupture. It is probable that this circumstance has led to the introduction of heat treated axles,



in which the primitive tensile properties of the steel are materially raised. Unexpected failures of heat treated axles, nevertheless, have been reported, occurring at so early a period in their use that some contributory cause must be looked for, not connected with the ability of sound steel to endure long continued stresses. Concerning the superior ability of heat treated axles to endure long continued stresses, proportional to their increased elastic limits, this important feature has not really received practical demonstration.

In the process of heat treatment the axle is suddenly quenched from a high temperature. The quenching introduces intense internal strains, and it is considered necessary to bore an axial hole through axles of large diameter in order to avoid internal rupture of the metal at this time. Even with the axial hole, the metal still is under suspicion and this distrust is exemplified in the specifications which commonly require a shock test to be made to demonstrate whether the steel has not been injured. The shock test is applied after the completion of the entire process, which in addition to sudden quenching, is commonly followed by drawing the temper, or partial annealing by reheating to a lower temperature than that which was employed in quenching. It is understood that in some of the smaller axles the drawing of the temper is omitted. Removing the axle before it quite reaches the temperature of the quenching bath is thought by some to be a desirable precaution to adopt to avoid the introduction of excessive internal strains.

The surface of quenched axles is put into a final state of initial compression hence incipient fractures, if any are formed, are likely to be in the interior of the axle where the metal is in a state of tension. Examples are reported in which such internal fractures have been discovered.

Excellence of workmanship in the machine finishing of axles is required. Defective surface metal may lead to the development of an incipient fracture. Under repeated alternate stresses steel is very susceptible to rupture from what are apparently slight causes. A light scoring of the surface or roughness left by the lathe tool may be sufficient to cause premature rupture. Modern high speed tool steels admit of the removal of metal in roughing out the forging with such chips and feeds in the lathe that the integrity of the axle may be impaired at the time of rough turning. The mechanical fit between the axle and wheel hub is an important feature. These remarks are in general based upon incidents in which failure of materials has resulted from neglect to observe these precautions.

### WHEELS.

Solid steel, steel tired, and chilled cast iron wheels are each subject to a common cause of injury, which may destroy their

integrity. A large percentage of the failures of wheels are due to the introduction of thermal cracks caused by unequal heating during the application of the brakes. The amount of mechanical work required to stop a train in a short distance from a high rate of speed is very great. This work is done between the brake shoe and the rim of the wheel, and results in the sudden heating of these parts, each of which acquires a high temperature.

An immediate effect is shown on the brake shoe, which is very promptly covered with a checker work of lines of rupture. The larger mass of metal in the rim of the wheel, while a portion of it only at a time is covered by the brake shoe, ameliorates conditions which are there less severe than experienced by the brake shoe. Many of the wheels escape injury altogether from this cause, but there is probably no exception in the case of brake shoes. Sheet metal inserts are in common use to keep the parts of the shoes together in serviceable condition. Most wheels are of such construction that ample strength is present to sustain the direct loads, independent of thermal influences.

The life of a wheel can hardly be well expressed in terms of tonnage, or wheel miles and tons, in view of the common manner of failure. The amount of braking done influences their life, and braking conditions depend upon grades, the number of brake applications incident to curves, signals, the character of the run, whether on local or through freight or passenger service, and a very material influence is felt in the character of the equipment, concerning the relative brake power of individual cars. In certain vehicles, of other kinds, independent braking surface is provided, but the exigencies of railway service have made it necessary to use the same surface for braking purposes and for supporting the loads on the rails. Where independent braking surfaces are used it is feasible to maintain better distribution on the pressure areas. The contour of the treads of wheels is constantly changing by reason of wear upon the rails, hence the brake shoe is required to act upon new shapes and at times to concentrate the brake pressure on limited areas of contact. Whatever modifications in shape or weight of wheel are made to meet the axle loads, the fact remains that service conditions must be considered in order to avoid those thermal dangers which threaten the integrity of the wheel in a degree equal or greater than generally pertains to other parts of the rolling stock.

#### STEEL CARS.

But little need be said on the subject of steel cars in respect to their advantages for safety over wooden ones; their superiority has been demonstrated in many instances. Steel cars have supplanted wooden ones, and it is merely a question of time when all wooden cars will have been retired from service. Attention for

the time being centers on the manner or disposition of the use made of wooden coaches in a mixed train composed in part of steel equipment. On account of the greater weight and strength of the steel cars it is undesirable to place wooden cars in front of or between them. In case of derailment or collision the impact of the heavier cars would aggravate conditions to the serious disadvantage of the wooden cars.

### SIGNALING.

The consideration which has been given to the question of railroad signaling by the Committee on Safety Appliances of this Association in previous reports plainly shows the importance of this branch of railroading in the minds of the various members. A large proportion of the discussions before this and similar associations, frequently leading to state or federal legislation, has been on the subject of safety to employees; but the art of signaling touches the traveling public more directly than many of the other subjects concerned with the safety of railway operation. A properly signaled railroad, by the additional information given, will enable all employees, and more especially those directly engaged in train operation, not only to take the necessary steps to protect themselves, but still further to safeguard the traveling public.

It may be said that signaling was first introduced as a convenience, rather than as a safety feature. The early history is rather vague, as is usual in the development of any art, but the first signals, primitive in form and means of operation, appeared soon after railroads became a factor in our civilization. The brief, historical statement following has been compiled from various papers presented before different associations interested in these matters. As early as 1846, it was the practice in England to group levers operating switches and signals in one locality. Later, interlocking between the levers, so that the wrong unit could not be operated, was added, and in 1867 interlocking machines were further improved, so that the mechanical machines were then nearly as far developed as at present. To illustrate the rapid advance made in England, it is stated that the London and Northwestern Railway in 1873 had 13,000 interlocked levers.

There is some doubt as to when the first interlocking was established in this country, but a paper read before the Railway Signal Association in 1909 stated that the first plant was put in service at East Newark, N. J., on what is now part of the Pennsylvania Railroad, on February 11, 1875. This was built from material purchased from Saxby & Farmer of England, a pioneer firm in the signal business. In another paper, it is stated that the first interlocking was installed at Spuyten Duyvil, N. Y., on the New York Central in 1874. It is understood that this material was designed and built in this country.

It was soon found that complicated track layouts required something more to operate them successfully than the usual manual interlocking machine, so that attention was given to the development of various kinds of power-operated interlocking plants. The first of this type was the hydro-pneumatic plant installed at Bound Brook, N. J., in 1884. A large hydraulic interlocking was later developed and installed at the World's Fair Grounds in Chicago in 1893, but this system never came into use. At one time an all-air system was in use and several plants of that type still exist. The first all-electric plant was built in the early '90's. At the present time large installations of both electro-pneumatic, the successor of the hydro-pneumatic type, and of the all-electric type are being made. It would be impossible to operate our large terminals safely and economically without these power interlocking plans.

The spacing of trains was also given early attention. The block system was proposed in England as early as 1842, but its use was still quite limited as late as 1854. An exhaustive report on block signaling is given in the report of the Interstate Commerce Commission to the Second Session of the Fifty-ninth Congress, published as Senate Document 342, and from this we learn that the first block-signalized line in this country appears to have been between Trenton, N. J., and Philadelphia, Pa., having been installed in 1863 or 1864. The controlled manual block was introduced from England to a limited extent in 1882 and the first extensive installation was probably on the lines of the New York Central Railroad between New York and Buffalo in 1892 and 1893.

The automatic signal is an American development. At first it was used with "track instruments", designed momentarily to break the control circuits as a train passed into a block and to close the circuits after the train had passed out. The limitations of this device were early recognized, since no protection was given against parted trains, broken rails, open switches, etc. The first signals with track instruments were installed in 1871 on part of the Boston & Maine System, and by 1879 there was considerable mileage in use near Boston. In that year, also, the track circuit was introduced on 10 miles of the Fitchburg Railroad, now part of the Boston & Maine, although the inventor, Dr. William Robinson, had made several small installations previous to that date, his first being at Kinzua, Pa., on the Pennsylvania Railroad, in 1872.

The continuous track circuit is now the accepted basis of all automatic signal systems and there are now approximately 30,000 miles of road and 51,000 miles of track so equipped. Of late years, improvements have been made in details of the apparatus and by the introduction of alternating current devices, but the fundamental principle remains unchanged. The track circuit is largely used as an adjunct of large interlocking systems and such terminals as the Grand Central and the Pennsylvania in New York could not be operated without it.

Notwithstanding the fact that great progress has been made in signaling on American railroads, we are still far behind England and the Continent in the use of such appliances. At the close of the year 1915, the Great Western Railway (of England) had 45,389 interlocking levers in service, with 915 additions during that year. According to the reports of the Interstate Commerce Commission for January 1, 1916, the Pennsylvania and New York Central, including all their affiliated lines, had less than 44,000. The mileage of the Great Western is about 6,600, as against the combined mileage of about 20,000 of the two American systems referred to. English lines undoubtedly have a greater density of traffic. It is impossible to make even a general comparison as to the mileage working under the block system except to say that practically all of the English mileage is worked under some form of block system.

Although there has been a comparatively rapid increase in signaling in this country, good standards of construction and efficiency in maintenance have not been overlooked, and very few accidents caused by failure of the signal system have been reported. On many roads, less than one "false clear" failure, or failure to indicate stop when it should, to 1,000,000 signal operations, is a common record, and a record of one failure to clear, thus indicating stop when it should not, to 25,000 signal operations, is one easily maintained.

An analysis and discussion of the results obtained from the signals in use on American railways will prove of value, not only as interesting information, but as indicating where further improvement is most urgently needed. For this purpose the following tables have been compiled, showing the progress in the introduction of block signals, and statistics as to the two main classes of accidents:

TABLE NO. 1.  
Statistics of block signals, compiled from reports made to the Division of Safety, Interstate Commerce Commission.

Year	Miles of operated line for fiscal year.	Miles operated under block system.	Percentage under block system.	Miles under manual block.		Miles under automatic block.	
				December 31.	Single track.	December 31.	Single track.
		December 31.	December 31.	Two or more tracks.		Two or more tracks.	
1907	229,951	58,678	25.52	38,517	4,363	6,440	
1908	231,333	59,548	25.74	38,407	5,126	7,064	
1909	234,764	65,758	28.01	42,843	6,278	7,960	
1910	238,551	71,269	29.87	44,897	8,312	9,399	
1911	242,689	76,409	31.44	47,067	9,314	11,020	
1912	245,063	83,949	34.26	52,834	10,128	12,090	
1913	247,421	86,736	35.09	52,030	11,887	14,632	
1914	251,027	96,608	38.48	59,271	13,674	16,099	
1915	257,569	96,575	37.50	58,407	14,180	16,762	



The trend of the two main classes of accidents, collisions and derailments, is clearly shown in the above table, and the relative decrease of collisions and increase of derailments is very marked, the deaths and injuries following the change in number of accidents. It is to be noted that the continued and fairly uniform introduction of the block system has been followed by a steady decrease in collisions as table No. 2 indicates, when considered in connection with table No. 1. Not all collisions can be prevented by the use of block signals, but this class of accidents can be decreased more than any other by block signal operation. There is a small proportion of derailments that may be prevented by proper signaling, especially when the track circuit is used, such as those due to broken rails, open switches, etc., but it is impossible from the data at hand to form any estimate as to this. Accidents due to roadway defects average less than 12% of the total accidents, and the accidents of that class which might be prevented by any signal system would be only a small part of that figure.

While the record of accident prevention due to block signals is very gratifying, it is obvious that efforts must not be relaxed towards increasing the mileage so operated, so that we may look for still greater reduction in collisions. As table No. 1 indicates, there are nearly 260,000 miles of railroad line in the United States, less than 100,000 of which are operated by the block system.

Not only should the block system be extended, but it is equally important that the mileage already installed be worked under proper rules. Each signal, whether called home, distant or advance, has a certain definite meaning, which should be obeyed without variation by the engineman. The distant or caution indication is the one most commonly unheeded, and this has undoubtedly been the cause of many accidents. Unfortunately the practice is somewhat common, and is even authorized by some rules, for the engineman to use his own judgment as to when he will reduce speed upon passing a signal indicating caution. In many cases this is no doubt safe, but experience has shown that dependence cannot always be placed on having the train properly controlled under such conditions. There is only one entirely safe rule, and that is to obey the distant signal indication at once, and not at some future point. The indication of the distant signal, when at caution, is as positive as that of any other signal and should be observed accordingly. Where three-position signaling is in use, with comparatively long blocks, objection may be made that strict observance of a caution signal indication would interfere with and delay traffic. However, this remains to be demonstrated, and it does not alter the fundamental fact that each signal's indication should be acted upon as it is received. Too great emphasis cannot be placed on the necessity for proper observance of the caution indication.

The question of uniformity of signal indications is important. While much improvement has been made, there is much still to be



done, especially on railroads where signals have been in use for a long period. It is expensive to change a signaling system, but every road which recognizes the fact that its signaling is not up to date should take the first opportunity to correct its system. Much obsolete signaling is still in use, and while it may apparently give good service, the interests of safety require a change to more complete and modern systems. It is generally recognized that for steam roads the semaphore operating in the upper right hand quadrant is the most satisfactory form of signal. A system so equipped for the day indication, and with red, yellow and green lights, respectively, for stop, caution and proceed, for night indications, is universally accepted as the best that can now be offered.

But uniformity should go farther than this and deal with the "aspect", which is the whole picture presented by the signal, including all the arms and lights on any one signal mast; in reading a signal this aspect as a whole must be considered, and not the individual arms. Such a scheme has been the subject of discussion for several years, leading to many expressions of opinion by the various experts, and considerable new signaling has been installed and old rearranged according to some one of the various schemes proposed. All this is a step in the right direction, and it can be said that there is more uniformity in signaling now than at any previous time.

The main objections to the principal uniform schemes that have been presented are the expense and complications, and the question has frequently been too hastily dismissed on this basis, without a careful consideration of all its claims, yet it is conceivable that the complications need not be greater than the traffic requires. And it must be admitted that a road having terminals in a large city, with dense traffic, needs something more in its signaling than a road that does not offer such service. So long as fast and frequent service is demanded by the public, and the railroad officials deem it proper to meet this demand, then the signaling must be arranged accordingly. When carefully analyzed, the uniform system is not so complicated as it first appears, for the same aspect or combination of lights always indicates the same thing. Under present practice it is not infrequently the case that one aspect may mean, for instance, to enter an occupied block (under permissive rules), or that the next signal is a stop, or that an order is to be given. Then, again, a number of signals may be located in a short space, as a home signal for an interlocking, an automatic signal or a train order signal, numerous cases existing where these three or more signals, may be in a space of a few hundred feet, all of which must be read by the engineer as he approaches, often at high speed. Uniformity aims to do away with these situations, giving the engineer but one indication to read within a reasonable space. Uniformity is much more necessary now than formerly, as main tracks are often used by different railroads in com-

mon and under such operating conditions it is inevitable that confusion results unless the signal indications are uniform.

To overcome objections that had been raised to the double scheme of a position signal by day and light signal by night, as far back as 1890 a semaphore arm carrying a reflector on its face to as to produce a position signal day and night was unsuccessfully tried. Quite recently a new plan of position signal has been tried with rather marked success. This consists of three rows of incandescent bulbs of special design, one horizontal, one vertical, and one inclined upward at 45 degrees. Only one row is lighted at a time, so that the indications of the upper quadrant semaphore are given. As the position is always apparent, no colors are needed or used. The indications are very striking by night, and by day are sufficiently visible to be fully equal to the semaphore. In addition to the benefits of a position signal at all times, there is an absence of the complications of the electric motors required to operate semaphores. This installation being on an electrified section, ample power is available to illuminate the lamps. Experiments are being made with a view of rendering this system suitable for use on steam operated roads where primary or storage batteries would have to be used.

Accidents continue to take place, even on well signaled roads, and it seems evident that something else is required to prevent such disasters. Perhaps an improvement in rules and discipline may overcome this and reduce the chance for human error, but in the light of past experience, this seems doubtful. The only other alternative would appear to be some system of automatic control of trains, and this is a serious problem, requiring careful consideration and extensive study of conditions on any road where it is proposed to adopt it. Many devices have been submitted to the Interstate Commerce Commission, most of which are utterly impracticable. Some are worthy of additional development and a few merit tests under railroad operating conditions. It is felt, however, that further development must rest with the railroads, who should put in an actual working installation, from which more conclusive and extended results could be obtained than is possible from the limited tests made by the Interstate Commerce Commission. While in some quarters it is said the automatic control of trains is wrong, it seems wise, considering the present state of affairs, that a practicable system should be developed, ready for extensive use, should it be finally decided that such a system is necessary. The best possible signal system should be installed and properly operated before it can be said that an automatic train control system is necessary.

Roughly, there are three classes of automatic train control devices which may be found practicable: the mechanical contact, intermittent electrical contact, and induction or wireless. The first depends on actual physical contact to produce the desired results and it is manifestly necessary to design the essential parts so that

they will withstand the excessive shocks and wear. The intermittent electrical contact is perhaps now receiving the most attention and it is much more flexible. The induction or wireless type is receiving considerable attention, though no installations are in practical operation. Its development is being watched with interest and such a type would seem to have some advantage in that there is no physical contact between the engine and roadside apparatus.

Uniformity along general lines would seem to be a necessity for any train control apparatus which is to be used to any extent. While it is not necessary that all details be the same on each road, yet, owing to the interchange of equipment and amount of jointly operated track, it is very desirable that the control should be effective on any road over which the equipment may be operated. The car coupler situation is somewhat analogous. To reach this end it would seem desirable that no train control apparatus should be used on an extensive scale, unless, in its general features, it had been approved under proper governmental control by a suitable board, a majority of whose members should be experts in direct connection with railroad signaling and operation.

Some of the systems have already been quite well developed and an extensive installation on a commercial basis is now being made on the Brooklyn Rapid Transit tracks. An inspection of the plans and details of manufacture of this will indicate to any one that the further development of the automatic stop is not the work for a novice in the art or for one lacking in resources. This installation is being handled by one of the large signal companies and by persons with large experience in all branches of railroad signaling, and the work has taxed the abilities and resources of even such an organization.

A prominent signal engineer in a recent address made the following statement which expresses an opinion quite commonly held by railroad officials, though often expressed in different language:

"Discipline is so correct when properly applied to the human mind, and results in general have been so nearly perfect in reliable transportation of passengers and freight on American railroads, that no one can deny the apparent lack of necessity for generally forcing upon the railroad features of compulsory physical recognition of the signal indication such as the 'Automatic Train Control'."

It is seriously questioned, however, whether it is possible in present-day practice to attain that ideal condition of discipline and training which will insure the absolute observance of every signal indication.

In the report before this body at the 1913 meeting a quotation was given from Engineering News relative to block signals on English railways, with which American roads are frequently compared. This quotation states that for over a generation English railways have been operating under an absolute block system. In

1894, 99.6% of the double track total mileage was so operated, and of 8,550 miles of single track, all but 770 were operated under the block system or staff. Of the 770 miles, only one engine at a time was allowed on the road, so that there was no danger of a collision.

In making comparisons between the English system and American system as to the accident record of each, this fact, that all the present employees in charge of train operation have been working under the block system all their lives and have known no other method of operation, is often lost sight of. By contrast, in this country the block system generally has been in use but a few years, so that the early training of a large number of men in the train service was not under that system. Naturally their habits of thought are quite different from those of men who have had just the opposite training. And this applies to officials of all ranks quite as much as to employees. Further, in this country, not only does a large mileage of road still exist which is not operated under the block system, but even portions of roads largely block signaled remain unprotected, so that train crews in the course of a single run may be operating under both methods.

The English adopted the block system long before traffic was dense or fast, considered by present-day standards, so that their operating methods grew naturally with the business. American roads, on the contrary, are in the position of having to change their operating methods after business has reached a large volume and adopt methods when the block system is put in use different from the early ones. Further, the use of the train order system, not common in England, has trained all employees in a different way than the block system; in the former the men on the road are encouraged in the habit of having others look out for them, but in the latter each man must exercise vigilance and carefully interpret the meaning of each signal as he comes to it.

In view of this, it seems impossible that this frequently expressed thought on discipline can be given serious weight under conditions existing and which always have existed on American roads. Not until practically all the main lines of American roads have been signaled, and such a system been in proper operation for a number of years, can we expect the results obtained in England.

Further, even when our roads have reached the perfection of signaling that exists in England, it is open to doubt if the statement quoted can be maintained. Experience has demonstrated that just the accidents which signaling is designed to prevent do actually occur on those roads which at the present time are farthest advanced in signal protection and whose systems fulfill the most modern requirements.

While it is unfortunately true that accidents do occur on block-signalized road, nevertheless the block system is the safest method of train operation in general use, and its superiority, as compared with all other methods of railroad operation, is fully recognized.

This Association has recommended that the use of the block system be made compulsory, and it is again urged that safety to the traveling public demands legislation requiring adequate block signals and rules governing their operation on all railroads.

CHARLES C. McCHORD,  
*Chairman*

WILLIAM D. B. AINEY,  
ROYAL C. DUNN,  
CARL D. JACKSON,  
O. L. OWEN,  
D'ARCY SCOTT,  
F. M. SHEPPARD.

Mr. DUNN, of Florida. I move the adoption of the report.

Mr. SHAW, of Illinois. Mr. President, the report submitted is very comprehensive, and I believe it should be approved.

There is one other element that might have been given, based upon some of our experiences in Illinois, which might be termed "equipment faulty in design". On one particular carrier's lines in the state of Illinois in the last two or three years there have been derailments which appeared to be peculiar to themselves. Investigation showed that the track conditions were normal, and that other conditions were normal, but after a series of investigations, both by the Commission and by the carrier, it developed that very probably the cause of the accident was the faulty design in the tender and water tank of a particular type of locomotive. The carrier itself became convinced that that was the probable cause of the accidents, and it is now having the most of these particular tenders remodeled. So I say, in addition to what has been said, there might be added "equipment faulty in design".

Mr. BELKNAP. May I add that in our investigations of tender derailments we have found the most complicated conditions regarding derailments. We have found that engine tenders constructed in a certain way would run right along on one railroad without any derailments, yet the same tenders on another railroad in the same territory would have a number of derailments.

I think no other vehicle has received as much attention in its construction, to provide against derailment, as the locomotive tender. It has a short wheel base, carries an extremely varied load, often top-heavy, on account of the coal space being full and the water being exhausted, and there are many features which make it very difficult to determine what might be the cause of tender derailments. I do not know whether it is altogether on account of faulty construction or not. It seems to me that that question must be studied on a particular railroad which

uses a certain tender, as to whether it meets the operating conditions; because as I say we find that a certain type of tender on one railroad will be derailed, while on another railroad, running through the same territory under similar conditions, the same type of tender will work right along, and there will be no derailments.

The PRESIDENT. The question is on the motion of Mr. Dunn of Florida to adopt the report.

The motion was agreed to.

## EXPRESS AND OTHER CONTRACT CARRIERS BY RAIL.

The PRESIDENT. I will now call for the report of the Committee on Express and Other Contract Carriers by Rail. I understand that Mr. Irvine of New York, the Chairman of that Committee, is not in the City. There are several other members of the Committee here.

Mr. THELEN, of California. Mr. President, I had hoped that this situation might not arise. I am a member of that Committee, but I do not like to sign that report, because it consists of only three paragraphs. It does not develop anything, and frankly I believe a committee of the National Association, that spends a whole year in investigating a problem of this kind, ought to present something more worthy of consideration by the Association. As a member of the Committee I am perfectly willing to take the full blame for the fact that there is nothing more in this report, but I do not want to sign it in its present form.

Mr. JACOBSON, of Minnesota. As a member of that Committee I was asked to sign that report, but I could not sign it, because some time last winter I wrote to the Chairman of the Committee and asked him to call a meeting in Chicago or at some other point, but he did not have time, so he neglected to call a meeting. Inasmuch as Minnesota would probably have put in a minority report if the Chairman had been present here, I did not care to sign the report.

Mr. YAPP, of Minnesota. Mr. President, on looking into the application of express rates in the sub-block territories, a peculiar condition presents itself in Minnesota, and I feel sure that the same situation exists in other states which come under what is known as Zone 3, and I should like to hear from the other states as to what they have done to remedy these conditions.

Where railway lines run horizontally within twenty or thirty miles of each other, and are crossed vertically by lines a long distance from each other, or vice versa, the present express rates are, in my opinion, unjust to the carrier and discriminatory against shippers, for the reason that shipments have to be carried through territories taking a higher basis of rates in order to

reach territories taking a lower basis of rates. In other words, the rates are gradually increased from point of origin to the sub-block where the junction point is, and then gradually decreased again from that point to the destination, which is a direct violation of the long and short haul clause and should be remedied, which can be done by requiring the shipper to pay for the service performed, and not as at present by paying for a service caused by his geographical location. I am going to cite to you two illustrations out of a number, to show what I mean. A shipment from Milaca to Onamia, which stations are only two sub-blocks apart in a direct line, has to travel through nine sub-blocks to reach destination; the present rate being sixty cents per one hundred pounds; again a shipment from Fairfax to Buffalo Lake, stations being in the same sub-block, has to travel through nine sub-blocks to reach destination, the present rate being fifty-five cents per one hundred pounds. I could give you many more illustrations of the same kind. Now if you will follow me I will show you what I mean by the sub-block proposition. In the case of the shipment from Milaca to Onamia, it passes through sub-block territory to which the rates are respectively fifty-five cents, sixty cents, sixty-five cents, ninety cents, ninety cents, ninety cents, seventy cents, sixty-five cents, and sixty cents, reaching its destination where it finally pays the sixty cent rate. In the case of the shipment from Fairfax to Buffalo Lake, it passes through sub-block territory to which the rates are respectively fifty-five cents, sixty cents, sixty-five cents, seventy cents, ninety cents, seventy cents, sixty-five cents, sixty cents and fifty-five cents, reaching its destination where it pays the fifty-five cent rate.

I will give one other illustration before I forget it. That is of express shipments moving from sub-block territory into New Duluth and Fond du Lac, Minnesota, all of which have to pass through Duluth, which is a higher rate territory, in order to reach there two points, which are in a territory taking a lower basis of rates.

To overcome this difficulty it would seem to me that it would be necessary to increase the number of unit rates, which would make the rates more on the principle of the short line basis of the railroad rates running through the respective sub-blocks, which if adopted would not destroy the method promulgated by the Interstate Commerce Commission.

Mr. FUNK, of Illinois. What is it that you propose?

Mr. YAPP, of Minnesota. To overcome this difficulty it will be necessary to increase the number of the units. What I mean by that is, that the present sub-block rates in our state commence at fifty-five cents and run up, sixty cents, sixty-five cents, seventy cents, which you will notice are five cent jumps, then the next is ninety cents, a twenty-cent jump, and then one dollar and fifteen

cents per one hundred pounds, a twenty-five cent jump, and to increase the units would be to prevent discrimination; that is, after seventy cents is reached the progressive increase should be on the basis of five cents per hundred pounds until it reaches one dollar and fifteen cents, which is the limit of the sub-block territory.

Mr. POWELL, of Nebraska. Would not your proposition change the present graduated scale?

Mr. YAPP, of Minnesota. No, it would not interfere with it in the least, for the reason that the interstate graduated scales are made up on the progressive jumps of five cents per hundred pounds.

Now if the above plan were adopted, I feel satisfied it would work no hardship on the express revenues, as in my judgment it would even itself up by increased rates where they should be legitimately increased, and by decreasing rates in the sub-block territory through which these shipments must pass in order to reach a given destination.

I am not prepared to state at the present time as to the volume of the business moving between the points indicated, but be that as it may it does not alter the facts. Again, it may be interesting to know that the express shipments of all companies in Minnesota in sub-block territory for the month of February, 1916, averaged 81.85 per cent of the total of their shipments, and again, their interstation shipments averaged 27.39 per cent, outside of the big terminals of St. Paul, Minneapolis and Duluth.

I should like very much to hear how other states in Zone 3 have handled this proposition. I have with me a few tabulated statements which illustrate this condition, and I shall be pleased to discuss the matter further with any one interested in it, after adjournment.

Mr. JACOBSON, of Minnesota. Mr. President, at a meeting held in Chicago in December, 1913, between representatives of the Interstate and State Commissions and Express Companies, regarding the putting in of the Interstate Commerce Commission order which took effect on February 1st, 1914, it was agreed that the states in Zone 3 should commence their rates on the basis of 55 cents per hundred pounds for one sub-block, 60 cents for two sub-blocks, 65 cents for three sub-blocks and 70 cents for four sub-blocks, where it would then meet the Interstate Commerce Commission rate of 70 cents.

In January, 1914, our Commission decided to permit the Express Companies to publish the interstate schedule of express rates with the above modification, to take effect on the first day of April, 1914. In view of the fact that it was impracticable, at that time, to determine just what effect the new scale of rates would have upon the revenue or traffic of the Express Companies, it was decided to give these rates a twelve months trial, which ended on April 1st, 1915. After the test period had ended it was shown, from the complaints filed in our office during the year, that greatest



trouble existed in the advance of the rates on the food products, which constituted principally heavy weight shipments. Our Commission found, after investigation, that the complaints were well founded, and after conferences and hearings with the Express Companies and shippers, it required the Express Companies to reduce their second class rates from seventy-five per cent of the first class rates to sixty per cent of the first class rates on intra-state shipments, to take effect January 15th, 1916, on certain commodities such as poultry, veal, meats, fruits, berries, butter, eggs, vegetables and fish; and it also made a few reductions in the block rates where they were found necessary. After these changes were made our Commission requested the Express Companies to furnish monthly statements of their shipments and earnings on forms furnished by us for the months of February, March and July, 1916; and also to show on the sheets, in the column provided for that purpose, what the charges on the same shipments would have been under the rates in effect prior to January 15th, 1916. On receipt of these statements the old mileage basis of rates were applied to these shipments, so as to ascertain what the effect was on the Express Companies' earnings. The companies vigorously protested against the reductions, but on analyzing the statements for the month of February, 1916, furnished by the Express Companies, the following is the total result:

The express earnings for February, 1916, amounted to \$78,860.24, which we will designate as Column 1; the earnings on the same shipments would have been prior to January 15th, 1916, \$80,543.54, which we will designate as Column 2; and earnings on the old mileage basis, on the same shipments, would have been \$78,263.82, which we will designate as Column 3. The percentage of decrease between Columns 1 and 2 being 02.09%; the percentage of increase between Columns 1 and 3 being 00.76% and between Columns 2 and 3, and 029.91%.

I have here a table which gives the individual earnings of the express companies, from which you can draw the conclusion that their present earnings in our state have not been materially affected by the reductions made by our Commission. I will ask to have this statement copied into my remarks.

## STATEMENT FOR MONTH OF FEBRUARY—1916.

	Present Earnings	Earnings would have been prior to 1/15/16	Earnings would have been on old mi. basis	Percentage Increase or Decrease be- tween Columns
	Column 1	Column 2	Column 3	1 & 2 %      1 & 3 %      2 & 3 %
Adams Express Co.	7,152.40	7,447.23	7,038.44	<del>03.96</del> 01.62      05.81
American Express Co.	18,534.23	18,381.90	18,919.07	00.83 <del>02.03</del> <del>02.84</del>
Wells-Fargo & Co. Exp.	17,070.64	17,368.37	16,663.82	<del>01.71</del> 02.44      04.22
Great Northern Exp. Co.	19,752.31	20,404.57	19,522.42	<del>03.19</del> 01.78      04.52
Northern Express Co.	11,039.81	11,272.38	10,771.00	<del>02.06</del> 02.49      04.65
Western Express Co.	5,310.85	5,669.09	5,349.07	<del>06.32</del> <del>00.71</del> 05.98
TOTALS	78,860.24	80,543.54	78,263.82	<del>02.09</del> 00.76      02.91

~~#~~ Decrease.

These are some of the items which should have been taken up by our Committee; and I felt that I could not consistently sign the report, as it seems to me impossible to make a proper report on a subject of this magnitude without the Committee getting together. And that is the main reason for my making these few remarks, which may be considered as a minority report.

Mr. RICHARDS, of South Carolina. As we have not heard the report of the Committee, which has given rise to this discussion, I suggest that the Secretary read the report, and let us see whether the Association will approve it or not. I understand that the report is brief. I have known some very valuable reports to be couched in very few words.

Secretary Connolly read the report of the Committee on Express and Other Contract Carriers by Rail, as follows:

No subject has been specifically referred to this committee for consideration and few recommendations have been made in response to invitations for suggestions of topics which should receive consideration. It may reasonably be inferred that the recent comprehensive reports of the former Committee on Express Service and Express Rates have sufficiently dealt with most topics of pressing importance.

Question has been raised as to the propriety and practicability of requiring express companies, in the annual reports filed with state commissions, to show the revenues and expenses in connection with the business of the particular state instead of filing, as at present, copies of the report made to the Interstate Commerce Commission, without segregation by states. This question for its solution demands an inquiry into and discussion of a number of details not conveniently to be treated by correspondence, and it seems wise to defer consideration of the subject until a meeting can be held of such members of the committee as may be present at the annual convention.

Attention of members of the committee has been called to delays in local passenger train service due to the handling at stations of a great volume of heavy express packages. Merchandise in heavy cases, machinery and even live stock, formerly shipped almost entirely by freight, have of late shipped largely by express and, except on the trunk lines, carried on passenger trains, the movement of which has been thereby seriously impeded. To what extent this traffic will be permanent and to what extent it has been caused by the unusual conditions of freight traffic during the past year or two can be determined only by experience. The problem created should, however, receive the prompt and serious consideration of the carriers in any event, and, if present conditions should prove to be permanent, the commissions and the carriers should co-operate in an effort to provide an effectual and permanent remedy.

Respectfully submitted,

FRANK IRVINE,  
*Chairman*  
E. A. MORLEY.

Mr. THELEN, of California. In order that the records of the Association in connection with this matter may be kept straight, and as a matter of courtesy to the Chairman of the Committee, whom I have not met, but of whom I have heard very kind things said, I move that this report be filed and printed.

The motion was agreed to.

### STATISTICS AND ACCOUNTS OF RAILROAD COMPANIES.

The PRESIDENT. The next report which I will call for is that on Statistics and Accounts of Railroad Companies, of which Commissioner Meyer of the Interstate Commerce Commission is Chairman. He has requested Mr. William J. Meyers, Statistician of the Interstate Commerce Commission to read his report.

The report was read by Mr. William J. Meyers, as follows:

Your Committee in its report presented to the Association a year ago called attention to the proposal to substitute the calendar year, for the present reporting year ending June 30, and recommended that the various State Commissions attempt to procure, wherever necessary, authority from their respective State Legislatures to make such substitution should further consideration of the matter lead to the conclusion that the change is desirable. This recommendation was approved by the Association. During

the present year this Committee has given further consideration to the matter and it now recommends that the Interstate Commerce Commission and those State Commissions possessing the requisite authority change the reporting year for steam railway companies from the present twelve-month period to the calendar year and that the others make such change as soon as authority can be obtained.

This change has been under consideration for several years. Your Committee is not advised with respect to the considerations that determined the first adoption of June 30 as the date for closing the twelve-month period covered by annual reports of carriers to State Railway Commissions, but it finds in the Interstate Commerce Commission's first annual report, issued under date of December 1, 1887, the statement (p. 29) that "in deciding upon the form and requisites of this report so far as it was in the discretion of the Commission to do so, three points have been had specially in view: \* \* \*; third, to have the report made as late in the year as possible and still leave time for tabulating and condensing the information furnished in the annual report to be made by the Commission. The date finally fixed upon as that to which the reports of carriers should relate is June 30, which is now the date prescribed for like reports in a number of States and it is hoped that, without much delay, uniformity may be brought about in reports required under both Federal and State laws, so that all may relate to the same time and involve no different methods of bookkeeping for their preparation." In the Commission's circular letter No. 4, issued under date of January 31, 1888, by the then Auditor of the Commission, Mr. C. C. McCain, for the purpose of inviting discussion of the details of a tentative form of report to be prescribed for the use of carriers in making annual reports to the Commission there is an extended statement of the reasons that led to the adoption of June 30 as the closing date for the annual reports required of carriers. That statement is reproduced in the margin.\* Following the adoption of that date by the Interstate Commerce Commission, the State Commissions which had not already adopted it gradually fell into line.

In the course of time it became evident that the Interstate Commerce Commission's estimate of the amount of time necessary for an adequate analysis of the reports of carriers and the compilation therefrom of tested figures for inclusion in the Commission's Annual Report to Congress was insufficient and in 1906, in connection with the formulation of a standard system of accounts to be prescribed for the use of carriers, the question again came forward for consideration. Accordingly in the summer of 1909 when the main outlines of the standard system of accounts had

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\*It is essential that a uniform date be adopted for the annual closing of the books and striking of the balances of all the carriers throughout the country. A careful consideration of this subject has led the Commission to the belief that the date most useful in itself, and most likely to be

been determined, Mr. H. C. Adams, the then Chairman of this Committee, addressed circular letters to the various State Commissions and to the principal carriers requesting statements of their views regarding the advisability of substituting December 31 for June 30 as the closing date of the reporting year. In stating the results of that inquiry, the Committee said "Replies received by your Committee did not indicate any strong desire, either on the part of Railway Commissioners or of the carriers interested, in favor of a change of the date for closing the fiscal year and investigation of the statutes relative to this point disclosed that the change of date from June 30 to December 31 would require enactments on the part of twenty-two states and of the Federal Government. In view of such a situation, your Committee decided that it would be unwise at that time for the convention to recommend a change in the date for closing the fiscal year." The reasons urged in favor of the change were sufficiently cogent, however, to lead to the inclusion in the Mann-Elkins Amendment to the Act to Regulate Commerce, approved June 8, 1910, of a provision authorizing the Interstate Commerce Commission by order to substitute December 31 as the date for closing the reporting year.

The carriers apparently reached the conclusion that their indifference in this regard in 1909 was unwise and in its 1915 an-

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generally accepted, is the 30th day of June. It is not possible to state all the reasons which have led to this result, but among the more important are the following: that date is the end of the fiscal year of the United States. The books of all the departments of Government and its accounting officers are settled as of June 30. These reports are required for transmission to Congress, which meets annually on December 1. If they are filed with the Commission by September 1 (or possibly 15), the remaining time will be necessary to enable useful work to be done in the way of compilation and of deductions, to be properly laid before Congress at the opening of its session, with as much of freshness in the information so obtained as seems reasonably practicable. The same thing is true of the reports to the various State legislatures. Some change in the legislation of some of the States will probably be required to effect the adoption of a uniform date, but it is obvious that the date proposed will involve less change than any other that can be named. More of the State reports are now made as of June 30 than at any other period, although some are required to December 31, and some to September 30. By far the greater number of the State legislatures meet in January, and the considerations above stated as adding to the value of a June 30 report for the information of Congress apply as well to the State legislatures. It is, moreover, the belief of the Commission that the date stated will involve less change in corporate methods of book-keeping than any other, and that the result will be generally satisfactory for the purposes of the corporations themselves. The importance of reaching a uniform result in this particular as well as in the form of the report is generally acknowledged. At present the whole matter is confused and burdensome. It seems best that this Commission should take the initiative and endeavor to bring about order and uniformity. It is not proposed to act arbitrarily or unreasonably in so doing, but to find the most feasible and convenient standing ground for all. A conference of railroad accountants, etc., was held at the office of the Commission on October 26, 1887, when the subject of the most practicable date was canvassed as well as other points in relation to the reports. The leading roads of the country were largely represented on that occasion, and the views of many not present were obtained by correspondence. As a result, the Commission is of the opinion that June 30 is the best date for adoption for the purpose of annual reports of carriers throughout the United States.

nual meeting the Association of American Railway Accounting Officers declared its approval of the proposed change.

Your Committee is informed that the proposed change is again under consideration by the Interstate Commerce Commission and that that Commission has canvassed State Commissions to ascertain their views with respect to the proposed change, with the result stated in the margin.\*

The subject has been set by that Commission for a hearing on November 13th, the day prior to that on which the Association is to convene for its 1916 annual meeting.

The reasons urged in support of the proposed change are so well stated in a letter under date of April 6, 1916, addressed by the President of the Association of American Railway Accounting Officers to the Chairman of the Interstate Commerce Commission that a copy of that letter is attached hereto as Appendix A. Should the proposed change be adopted, it is the view of your committee that the transition from the present basis to the new one can best be made by requiring a report for the calendar year 1916. This would give for comparative purposes figures for a twelve-month period, which would be comparable with much less necessity for adjustment and allowance than would be the case if a report were required which would cover only the six months July 1 to December 31, 1916. In dealing with the report for the entire calendar year, 1916, it is not apparent that there will be any need for adjustment in comparison with preceding annual reports further than to bear in mind that the time interval between the report for the twelve-month period ended June 30, 1916, and that for the twelve-month period ending December 31, 1916, is only half as great as that between any two consecutive preceding

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\*Substantially unqualified approval of the change is expressed by 29 Commissions, namely, Arizona, Arkansas, California, Colorado, Connecticut, District of Columbia, Idaho, Illinois, Kansas, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, Second District, North Carolina, North Dakota, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Washington, Wisconsin, and Wyoming.

Although several of the State Commissions indicate that it will be necessary to secure changes in their statutes before they can actually make the change in the reporting year, they purpose to request such change in their statutes as soon as they learn that the Interstate Commerce Commission has adopted the calendar year. In addition to these, the Attorney General of the State of Delaware, which has no public service commission, indicates approval of the proposed change.

Seven Commissions appear to be somewhat indifferent in regard to the matter, but indicate that they will make the change if the Interstate Commerce Commission does. These are—Louisiana, Maryland, Minnesota, Ohio, Oklahoma, Rhode Island, and West Virginia. Some of these also will have to secure the consent of their legislatures before the change can be made in their States. They will endeavor to secure such consent in case the Interstate Commerce Commission makes the change.

Six other Commissions are opposed to the change, apparently solely because of the fact that their statutes require the year closing June 30th, or require the Commissions to report to the Governor or to the Legislature at such times as practically necessitate the preparation of the report at an earlier date than would be practicable in case the reports were not received as under the present arrangement.

Six Commissions—those of Iowa, Kentucky, Maine, New York, First District, South Carolina, and Texas—are opposed to the change regardless of statutory provisions.

annual reports. This can easily be taken into consideration in any comparative study of annual statistics and apparently this is the only feature involved in the change for which any allowance need be made. The record for any twelve consecutive months includes a complete cycle of seasonal changes. Your committee recommends that the Association approve the proposed change to the calendar year as the basis for annual reports of carriers by steam railway to the state and national commissions receiving such reports.

If the change in the reporting year should be made as above suggested, and carriers by steam railway should be required to file reports covering the calendar year 1916, the orders for copies of state forms to be supplied from the Government Printing Office should immediately be placed with the Interstate Commerce Commission.

Upon suggestion to the commissions represented in this association, a meeting was held in Chicago on May 23, 1916, at which representatives from nine commissions considered various topics with the view of developing greater uniformity in the statistics compiled and published by the state commissions from the annual reports of carriers. Some progress was made, but many of the propositions submitted were held for further consideration. Those attending the conference felt that the subject of uniformity in the compilation and publication of statistics is capable of much further development than it has yet achieved. It is recommended that further conferences with respect to the same matter be held from time to time.

During the year the Interstate Commerce Commission, through its Division of Carriers' Accounts, has collected a large amount of material on the practices of carriers in accounting for depreciation of equipment. This material has not yet been fully analyzed, but a compilation of the various annual rates used by carriers discloses a considerable range. The great majority of the annual rates charged by the carriers earning more than \$1,000,000 per annum range for the various classes of equipment as follows: Steam locomotives, 2% to 7%, 77% of the reporting carriers charging less than 3½%; freight-train cars, wood 2% to 7%, 57% of the reporting carriers charging less than 4%; freight-train cars, steel, 1% to 6%, 85% of the reporting carriers charging less than 3⅓%; passenger-train cars, wood 2% to 7%, 70% of the reporting carriers charging less than 4%; passenger-train cars, steel 2% to 5.78%, 80% of the reporting carriers charging less than 3¾%. These returns suggest that accounting for depreciation has not yet been standardized.

There have been brought to the attention of this committee the results of an inquiry made by the Bureau of Railway Economics regarding reports required to be filed with federal and state authorities by carriers by steam railway. From a preliminary study of the returns it appears that during the year ended June 30, 1915,

the number of reports filed by the larger carriers, representing slightly less than 205,000 miles of operated road, aggregated 1,876,208. Some of these were required to be filed in duplicate and the number of duplicates was 1,115,570, making a grand total of 2,991,778. Of the number of originals, 1,565,042 were filed with federal authorities and 299,551 were filed with state authorities, while 11,615 were filed with local authorities. Some of these reports consisted of but a single sheet, while others were relatively large. Some were largely composed of matter which the carriers would record for their own purposes, while others contained little or no matter of value to the carriers. In view of the number of reports, it seems advisable to examine critically, at proper intervals, the list of reports required and to eliminate those no longer useful.

In connection with the matter of reports required to be filed by carriers, your committee respectfully suggests that it would be well for the various commissions represented in the association to secure wherever necessary greater latitude for administrative discretion in the matter of requiring reports to be filed in certain cases. Many of the smaller carriers state that they find the provisions of the laws requiring reports in numerous cases to be burdensome, and while your committee does not wish to under-rate the importance of ample and accurate records with respect to the efficiency of operation of even small carriers, it is satisfied that the necessity for certain reports is less in the cases of small carriers. Carriers in the Interstate Commerce Commission's Class III, those earning less than \$100,000 per annum, while amounting to more than 48% of the total number of operating carriers by steam railway, exclusive of switching and terminal companies, report operations on less than 31% of the operated *road* mileage, and less than 21% of the operated *track* mileage, and their revenues were less than one-half of 1% of the total for the country. If the matter of the character and number of reports to be required of this class of carriers were left to the discretion of the respective commissions, unnecessary burdens upon these small companies might be lessened without sacrificing any public interest. It is not suggested that commissions should not have full authority to inspect books and other records of such corporations and to require the institution and maintenance of such records as the administration of the law by such commissions may show to be necessary, but it is the view of your committee that the determination of such records and the details of the reports to be required of such corporations should be left to the respective commissions, rather than be fixed by statute. The statute should, so far as practicable, prescribe only the controlling principles leaving the details to be worked out by the commissions.

Complaint is occasionally made on account of delay in the receipt of annual report forms supplied by the Interstate Commerce Commission. It has been suggested through the Division of Sta-



tistics that if the state commissions will file in the office of the Statistician not later than March 1, each year, statements of the number of copies of the State Form desired, they can probably be procured from the Government Printing Office and placed in the hands of the respective commissions prior to June 30. The foregoing dates should, so far as practicable, be advanced six months, if, as has been proposed, the reporting year is changed to correspond to the calendar year.

The substance of a communication from President Thelen of the California Commission, bearing upon the accounting for donations, is submitted herewith as Appendix B.

B. H. MEYER,  
*Chairman.*

C. I. STURGIS,  
H. C. HASBROUCK,  
THOS. YAPP,  
U. G. POWELL,  
W. J. MEYERS.

Mr. Yapp states that in his opinion the first annual report to be called for on the calendar year basis should be for the year 1917.

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(Note. The foregoing report has been submitted to the various members of the committee, but at the time of going to press the member whose name is not above attached had not been heard from.)

### Appendix A. Letter of Mr. R. A. White.

ASSOCIATION OF AMERICAN RAILWAY ACCOUNTING OFFICERS  
Office of the President  
Grand Central Terminal

New York City

*April 6th, 1916.*

Hon. Balthasar H. Meyer, Chairman,  
Interstate Commerce Commission,  
Washington, D. C.

Dear Sir:

At its twenty-seventh annual meeting, held in Atlanta, Ga., April 28, 29 and 30, 1915, the Association of American Railway Accounting Officers adopted the following resolution:

"Resolved, It is the sense of this Association that it is desirable that the fiscal year—for reporting to federal and state railroad commissions—be changed as rapidly as possible to terminate on December 31st, instead of June 30th."

"Further resolved, That the Executive Committee be empowered to deal with the federal and state commissions regarding this matter, either through the Association or otherwise, as may seem best."

On June 19, 1915, this matter was informally discussed with you and Commissioner Harlan and in accordance with the suggestion by you gentlemen at that time, this Association has undertaken to ascertain the views of the chief executive officers of the railways, and the attitude of the state railroad commissions. As a result of which it was found that the change of the reporting period to federal and state railroad commissions to terminate December 31st instead of June 30th, is

Favored by the Chief Executive Officers and the	
Accounting Officers of railways operating . . .	236,868.26 miles
Opposed by the Chief Executive Officers and the	
Accounting Officers of railways operating . . . . .	40,784.37 miles

This represents that, on a mileage basis, over 85% of those voting favor the change, while a little less than 15% is opposed.

So far replies have been received from 31 state railroad commissions, 21 of which are in favor of the suggested change, 6 will make the change if the Interstate Commerce Commission and the other state commissions do likewise, 2 will advise further at a later date, 2 are opposed to the suggested change. In the case of those states where alteration of the statute would be required to accomplish the suggested change, the state railroad commissions have indicated that they would be glad to recommend to the legislature that such an alteration be made.

The following arguments have been submitted in favor of changing the period for reporting to the various commissions to end December 31st:

- (1) It ought not to be necessary to define what is meant by a year or a date, and when reference is made by the Commission to 1915 or the year 1915 it ought not to be necessary to use the paraphrase—"the twelve months ending June 30th, 1915." The word "year" has a definite meaning.
- (2) Many carriers are required to make extensive reports to state commissions, covering a calendar year period, for purposes of taxation; thus largely duplicating the work included in the fiscal year report. The two reports may present more or less apparent variance, which would be overcome by having both cover the same period.
- (3) Many carriers make a complete report to the stockholders, covering the calendar year. The suggested change would be a decided convenience to them.
- (4) On the majority of the railways of the United States, the logical business year coincides more consistently with the calendar year than with a year ending June 30th.

- (5) On most railways, the program of maintenance work conforms naturally to a calendar year; and in reporting the details of such work, a year ending December 31st has decided advantages over a year ending June 30th. The maintenance forces are at the maximum and the heavy work is in progress on June 30th, while December 31st is the natural close of the maintenance year.
- (6) The suggested change would enable more direct comparisons between the railways, as an industry, and other great lines of industry with which a comparison is desirable.
- (7) Annual reports to the Interstate Commerce Commission and to the various state commissions can be more easily prepared during the winter than during the summer season, as the summer season is the period for vacations in the general offices.
- (8) The outlook for the future seems to indicate that the calendar year will present new advantages from time to time rather than new disadvantages.

The following reasons have been advanced by the interests opposed to the changing of the present reporting period:

- (1) A change would necessitate one partial report covering the transition period.
- (2) Comparisons would be disturbed.
- (3) At December 31st the crops have not been moved, and the end of a crop moving period for a year is better represented by June 30th than by December 31st.
- (4) It would be necessary to have stockholders of various carriers change the fiscal year for those reporting for some period other than December 31st, to that year, in order that the annual reports to stockholders might conform to the fiscal year of the regulating bodies.

As to the matter of disturbing comparisons of past years, your attention is invited to the fact that the Commission has from time to time changed its accounting classifications, which has, of course, resulted in disturbing comparisons unless the figures were re-worked or the conclusions drawn from the figures modified to conform to the changes made. The suggested changes in the reporting period would not disturb comparisons to any serious extent for the reason that the Commission might for the first period require one report covering the twelve months ending June 30th, and one report covering the twelve months ending December 31st. In this way the comparison on the June 30th basis would be maintained through the first year of the change and also there would be established a new basis for comparison thereafter for the twelve months ending December 31st.

The programs of maintenance and improvements conform naturally to the calendar year, as such programs are commenced during the early part of the calendar year and are completed during the latter part of the calendar year. This is particularly true upon such roads as lie in a section of the country which is particularly affected by climatic conditions, such as heavy snow falls or other seasonal storms. Under such conditions June 30th is the busiest part of the work; neither the maintenance nor the improvement projects have been completed; the amount of material taken out of the track, for example, is known but until the work is completed it is not known what, if any, part of this will be put back. Where both improvement and maintenance work are involved the exact amount of each is not known until the work is completed. Therefore, a report for twelve months ending June 30th will contain the closing transactions and the adjustment of a program of one year with the commencement of a perhaps dissimilar program of the following year. On the other hand, a report for a year ending December 31st will include both the commencement and termination as well as any adjustment that may be necessary in carrying out the accounting in connection with the work,—so that a report for twelve months ending June 30th may be inaccurate and will be incomplete, while a report for a year ending December 31st must be both accurate and complete.

In regard to the suggested necessity for changing the period for rendering reports to stockholders for the calendar year instead of the year ending June 30th, in case the Commission should make the suggested change in its reporting period: This is a feature which has been borne in mind by all those who have considered this subject, and it is my understanding that most of the railways are prepared to take the necessary action.

I should like to emphasize the following humanitarian reason for changing the period of reporting to the Commission: Nearly all of the officers and as many as possible of the clerical force like their annual vacation at a time of the year when it really counts for something. Few men can really have a good time in winter; most of them want to get away during the summer for rest and recreation. No one would maintain that a vacation should take preference over reports to the various commissions, but with the fiscal year closing on June 30th, the heaviest work for the clerical forces of a railroad occurs in July, August and September, during which time the weather conditions are most enervating and during the very time when these men would like to have vacations. During the period of the preparation of annual reports it is necessary for the clerks to work overtime more or less, and the officers who have to supervise the preparation of the reports must perform such supervision in addition to their regular duties during the heated season of the year. If the fiscal year closed at December 31st, this pressure would come during January, February and March, a time of the year when the weather conditions inspire vigor and activity.

You have courteously offered to present this matter, which had been discussed informally with you, to your associates on the Commission, and I very gratefully take advantage of your offer. The Association of American Railway Accounting Officers respectfully urges that the Interstate Commerce Commission issue an order changing the closing of the fiscal year from June 30th, as at present established, to December 31st. Section 20 of the Act to Regulate Commerce provides that the Commission may require annual reports and may fix the time and prescribe the manner in which such reports shall be made, so that it is the understanding of the Association that the Commission has it in its own power to make this alteration. It is understood from the replies received from the various state commissions that their action depends only upon that taken by the Interstate Commerce Commission. In many instances the change will be welcomed, and in all instances will be followed.

If the Association can be of any assistance in the matter or if any of the points brought out in the foregoing can be amplified or further explained, please advise me, as President, and the Association will be very glad indeed to comply promptly.

Yours respectfully,

R. A. WHITE,  
*President.*

**Appendix B. Memorandum of Mr. L. R. Reynolds, Auditor of the Railroad Commission of the State of California.**

Prepared at the request of Hon. Max Thelen, President of that Commission, and submitted by President Thelen for consideration of the Committee on Statistics and Accounts of Railways.

Referring to the attached letter requesting a statement of this Commission's work during the year and any suggestions in connection with the work of the Committee on Statistics and Accounts of Railways of the National Association of Railway Commissioners, I beg to submit the following criticism of the Classification of Income, Profit and Loss and General Balance Sheet accounts prescribed by the Interstate Commerce Commission and effective on July 1, 1914.

That the Interstate Commerce Commission change the requirements referred to, I deem of extreme importance, as the practices involved are fundamentally wrong, and I believe will ultimately work much harm. They have been embodied in the Classification of Accounts for Public Utilities of the Oregon and other Commissions, they apparently not seeing the danger of them.

Account No. 606, "Donations" reads in part, as follows;—

"This account shall include amounts, creditable to surplus, of cash or its equivalent in estimated money value at the time of acquisition of lands or

other property donated by individuals or companies for the construction or acquisition of property. It shall also include donations made by individuals and companies in connection with the construction of new lines for the purpose of compensating the carrier for loss anticipated during the early period of operation.

Any advances made by individuals or companies with absolute or conditional provision for partial or complete reimbursement shall not be considered a donation prior to the fulfillment of all conditions, and then only to the extent to which liability for reimbursement is nullified or negated. Prior to such determination the amounts received shall be credited in balance-sheet account No. 778, 'other unadjusted credits.'

Note. Donations made by states, municipalities, and other public corporations as their contributions toward the construction or acquisition of property shall be included in balance sheet account No. 754. 'Grants in aid of construction.'

Under this provision, all lands and rights of way unconditionally donated by individuals or companies, in order to get extensions or side tracks, are immediately appraised by the railroad company and whatever value they fix upon this donation, is credited to Profit and Loss, and becomes subject to distribution in dividends.

These donations aggregate immense sums of money. The Oakland and Antioch Railway, if it carried out these provisions, would have commenced operations with a surplus of probably a million and a half dollars.

Donation of lands, etc., I believe should be credited to a liability account to be entitled "Donations in aid of Construction."

Under "Special Instructions" for Balance Sheet Accounts, there is found the following;—

"When stock which has been issued or assumed by the accounting company is reacquired, the difference between the price paid and the par value of the stock shall be credited to profit and loss account No. 607, "Miscellaneous credits," or charged to account No. 621, "Miscellaneous debits," as may be appropriate. Concurrently the premium or discount account for the particular issue of stock reacquired shall be adjusted through Profit and Loss to the extent of the premium or discount applicable to the shares reacquired. In case the premium realized or discount suffered at the prior sale of stock reacquired has been included in an asset account other than the premium and discounts account, such asset account shall be concurrently adjusted through Profit and Loss to the extent of the premium or discount previously included therein with respect to the shares reacquired."

Under this provision, railroad stock which has been given away as a bonus with issues of bonds, when reacquired by the company, at oftentimes a very small figure, is reflected, sometimes to the entire amount of the value, in the surplus account.

The Ocean Shore Railroad will thus pile up a large surplus from stock purchased for one dollar or so a share for non payment of assessment.

In round numbers, the Pacific Electric Railroad, has issued seventy-five million dollars of stock which is carried on the books of the Southern Pacific at something like three million. The Southern

Pacific Railway might cancel fifty million of this stock without reducing its own assets a penny, turn it back to the Pacific Electric, and give them a surplus of fifty million dollars, all available for dividends.

Of course there is the provision that the premium or discount for this particular issue of stock shall also be adjusted through Profit and Loss, but inasmuch as these issues were technically for contracts or other consideration claimed to be worth full par value of stock, there is no discount set up and probably never will be. It will be recalled that the United Railroads cancelled one million two hundred thousand worth of stock and credited same to surplus on a similar plea.

Mr. YAPP, of Minnesota. Mr. President, in explaining my reason for coming to the conclusion that the first annual report to be called for on the calendar year basis should be for the calendar year, 1917, I wish to say that it is on account of the fact that since this organization met last year many of the states have had no legislatures in session, and were unable to arrange to make these necessary changes. If this goes into effect for 1916, the Railway Companies will be required to make an annual report as of June 30, 1916, and also one for the calendar year ending December 31, 1916. Again, those states which cannot act at the present time will be required to have separate reports for 1917, one for the fiscal year ending June 30, 1917, and one for the calendar year ending December 31, 1917. In the interest of uniformity it seems to me it is best to postpone action upon this until December 31, 1917. Then the legislatures which will meet this coming winter can act upon the desired change and it will make it easier for the Railway Companies to handle.

Mr. FOLEY, of Kansas. There is one suggestion, not especially in the nature of an objection at all, that I desire to make in relation to that portion of the report which deals with the change of date for the annual reports made by the carriers.

Some of the reports made by commissions to the legislatures are based more or less upon the reports made by the carriers and public utilities; and as the legislatures generally meet along in the earlier part of the year; it appears to me that it would be impossible to prepare the report in time, if the date were changed from the fiscal year to the calendar year, because the commissions would receive the reports from the carriers and public utilities at the very time when they ought to have their own reports ready to be sent to the legislatures. It seems to me that where the reports are made at the end of the fiscal year, there is a longer time to analyze them and prepare comments on their contents, than there would be if the reports were made at the end of the calendar year. I offer this as a suggestion, and not as an objection to the report.

Mr. POWELL, of Nebraska. Mr. President, I move that the recommendation of the Committee be adopted; and while I am on my feet, I want to endorse what Mr. Yapp has said in regard to making this recommendation effective for 1917 instead of 1916. Also I want to emphasize, in my judgment, the necessity for this change. I know in the western passenger cases, in going through the accounts of a number of railroads operating in the western territory, I found that some of the roads, that were not making as good earnings as others, cut out a great deal in the way of maintenance charges during the latter part of the fiscal year. No doubt this was done to the detriment of the properties, because labor could be secured in the early part of the year, in the spring months; but because of the necessity of paying dividends those maintenance charges were suspended.

I move the adoption of the report, with the recommendations contained in it, but that the date of the proposed change be December 31, 1917.

The PRESIDENT. Mr. Yapp, do you wish to make a motion in the nature of an amendment?

Mr. YAPP, of Minnesota. No, I only made a suggestion. I simply wanted to give my opinion.

Mr. DUNCAN, of Indiana. Mr. President, we have had reports made to the Railroad Division of the Public Service Commission of Indiana since 1905. On making an investigation and study of these reports we found that their statistical value was very great, but that the statistics had been very little used. In our report for 1915, which was published a short while ago, we compiled an abstract of all the statistical information for the eleven years that we had had reports, and I myself found a study of that information very instructive and helpful. Now to change the time of reporting from June 30, the end of the fiscal year, to December 31, the end of the calendar year, will break the continuity of the system. It will impair the value of all the statistics gathered from the beginning of our railroads down to the present time. For that reason I have opposed it.

There is another reason. Our state statute requires our Commission to report to the legislature, or to the Governor for the benefit of the legislature, not later than the first day of January. Under our law we cannot conform to the changed conditions prescribed by this report.

Mr. DUNN, of Florida. Mr. President, I find the same objection to this change that Mr. Duncan does. Then there is another objection so far as Florida is concerned. Our legislature meets on the first day of April, and should this report be made to us for the calendar year ending December 31, there would not be sufficient time after that for us to prepare this information in order to get it into our annual report to the Governor.

Mr. WILLIAM J. MEYERS. As the Interstate Commerce Commission is required to make its reports to Congress at about the time



Congress convenes, which is the first Monday in December, we avoid the difficulty which has been suggested by the several members here, by compiling the figures concerning earnings and expenses from the monthly reports of the railroads. I believe no railroad company has any objection to making monthly reports to the state, since it is required to make monthly reports to the Interstate Commerce Commission, and from the monthly reports the earnings and expenses, charges and taxes can be compiled to a much more recent date than if you rely on the annual reports.

So far as the suggestion is concerned that to change the dates will vitiate comparisons, I am confident from my study of the matter that that will have little weight, because the proposition is not to take a six months report to bridge the gap between the old system and the new one, but to have an overlapping report beginning with the preceding January 1 and running until December 31. Any period of twelve consecutive months will include all the four seasonal changes of the year, all the changes due to decrease in traffic during the winter months, and everything of that kind. So the objection falls, if we require the new report to be for twelve months.

Mr. JACKSON, of Wisconsin. What will be the situation if the Interstate Commerce Commission find that the calendar year should be adopted? While under the report it would seem that two-thirds of the states would be willing to accept such a change, it would not be binding upon those states which would not find it convenient to get out their reports under the proposed new system.

Mr. DUNCAN, of Indiana. I do not think for a moment that the Interstate Commerce Commission could change our statute. We would be compelled to require our railroads to report at another season of the year, or for another period, and that would be hard on the railroads.

Mr. THORNE, of Iowa. In regard to this matter of the calendar or fiscal year, at first I objected on the same ground that Mr. Duncan did; but on further consideration I am very frank to say that I believe there is no break in the continuity of comparisons, if you have a complete twelve months period covered when the change is made, because the others are twelve months periods. And as to the other proposition, I think it is up to the states to make a requirement of monthly reports.

Another argument in favor of this change is the fact that most other lines of business make reports covering calendar years, and it is very important that we should have figures comparable to other industries.

Mr. HALL, of Nebraska. Nebraska is in the same situation as many of the other states. The reports that are made on the 30th of June are made in accordance with the state law, and we understand that that would have to be changed; but if we understand that it is the desire of the Interstate Commerce Commission, and

that it is the consensus of opinion of the commissioners of the National Association, we are willing to take our chances with our legislature, to get the statute repealed, and then have the legislature either pass a law requiring the reports to be made at the end of the calendar year, or leave the matter with the Commission as to the dates of the reports. If our legislature would simply repeal the statute and place the matter in the hands of the Commission, then we could fix such a date as would be in accordance with the date fixed by the Interstate Commerce Commission or this Association. I am very sure that if it is the desire of the Interstate Commerce Commission and the National Association to change the date to conform to the calendar year, we could have that done.

The PRESIDENT. The question is upon the adoption of Mr. Powell's motion to change the effective date of this proposed change from December 31, 1916, to December 31, 1917. Mr. Powell moves that the report be amended to that extent. Are you ready for the question?

The amendment of Mr. Powell was rejected.

The PRESIDENT. The question is on the adoption of the report as submitted.

The motion to adopt the report was agreed to on a rising vote, ayes 27, noes 5.

### CAR SERVICE AND DEMURRAGE.

The PRESIDENT. Next is the report of the Committee on Car Service and Demurrage. Mr. Burr of Florida is Chairman of that Committee.

The SECRETARY. No report has been presented.

The PRESIDENT. No report has been filed from that Committee, and it will be passed.

### PUBLIC UTILITY RATES.

The PRESIDENT. We will next hear the report of the Committee on Public Utility Rates, which will be presented by Mr. Thomas W. D. Worthen of New Hampshire, Chairman of the Committee.

Mr. Worthen read the following report:

In this report your committee has aimed to bring together in concise form the more important principles, theories, and practices connected with utility rates. It is introductory and intended as a basis for further study.

A few recommendations believed to be in the interest of both the utilities and the public are appended.

The usual statutory requirement is that all utility rates shall be just and reasonable. Just and reasonable rates are described to be such rates as produce a fair return on the fair value of the property in use and useful in carrying on the business, and, further, such rates as are free from preferences or undue discriminations between persons, localities, commodities or classes of service. The same principles underlie utility and railroad rates, and these are clearly set forth in *Smyth vs. Ames* (169 U. S., 546, 547) :

"The utmost that any corporation operating a public highway can rightfully demand \* \* \* is that it receive what under all the circumstances is such compensation for the use of its property as will be just and reasonable both to it and to the public.

"The basis of all calculations as to the reasonableness of rates \* \* \* must be the fair value of the property being used by it for the convenience of the public.

"What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth."

Hence, at the outset of any rate study or investigation it is necessary to determine the fair value and the fair rate of return as applied to the particular case under consideration.

#### FAIR VALUE.

Consideration of the question of fair value is regarded as a function of the Committee on Valuation and is not included in this report.

#### FAIR RETURN.

The amount of return should be such as to provide for the cost of economical and efficient operation, taxes, depreciation, a fair net return on the fair value of the property devoted to public use, and a proper margin for the successful conduct of the business. Exceptional efficiency of management should receive consideration and encouragement.

#### COST OF OPERATION.

Cost of operation requires careful attention in rate questions, and in establishing a rate system competent engineers and accountants must make such investigations as to determine accurately the degree of economy and efficiency with which the business is conducted.

#### TAXES.

The matter of taxes requires only to be noted, but attention is called to the fact that there is often an unjustifiable difference

between the valuation on which taxes are paid and that on which rate of return is allowed.

#### DEPRECIATION.

The fair amount to be set aside for depreciation varies with local conditions and can be determined only by a careful accounting for a long term of years. The extent to which replacements are included in operating expenses, and the thoroughness of the repairs and upkeep of the plant have an important bearing on the additional amount necessary to be set aside to safeguard the investment.

The composite life of the plant, determined from the probable length of life of its various parts, gives a percentage which is taken as a working basis, and should be subject to such modifications as experience requires.

Example: If the composite life is found to be thirty-three and one-third years, giving a depreciation rate of three per cent on a straight line basis and replacements to the amount of two per cent are included in operating expenses, only one per cent additional would be assigned to depreciation.

Rates for depreciation allowed by commissions range from one per cent to six per cent according to conditions.

#### RATE OF NET RETURN.

Fair rate of net return varies widely with local conditions. In general the legal rate of interest may properly be taken as a standard of measure of the fair rate of net return to be distributed to the stockholders, but this may require modifications to fit cases which are exceptional in the amount of risk connected with the investment. When a business is of a permanent and stable character, and is free from irresponsible and destructive competition the rate of net return may well approach that on bond and savings bank investments, and on the other hand when an exceptional element of risk pertains to the business, as in obsolescence of plant or obvious possibility of competition of other substitute service, a rate substantially above the legal rate of interest may fairly be allowed. (The legal rate of interest is five per cent in three states, six per cent in thirty-one states, seven per cent in eight states and eight per cent in six states.)

Rates of net return allowed by commissions range in general from five per cent to eight per cent, but in municipal plants, rates ranging down to four per cent have not been declared confiscatory, and as high as ten per cent rates have been allowed in a few instances. There is a considerable twilight zone between a rate of return that would be declared confiscatory and the minimum rate of return that would be regarded as reasonable.

It must be borne in mind that there is no necessary relation between the stock and bonds outstanding and the fair value of the property. When the amount of stock equals that of the bonds and they together equal the fair value of the investment, a desirable but rare state of affairs, the lower rate on the bonds allows a higher rate on the stock, e. g. if in such a case a six per cent net rate of return is allowed on the fair value of the investment a bond rate of four and one-half per cent would allow a seven and one-half per cent rate on the stock. The rate of net return allowed should be such that new capital may be available for extensions and improvements necessary for the proper development of the business.

#### BUSINESS ENCOURAGEMENT.

Some allowance should be made in rate of return authorized as well as in the rate of dividends distributed when necessary in order that the business may become firmly established with a substantial surplus within a reasonable length of time. It is important to encourage economy and efficiency of operation. A special effort in this direction has been made in Massachusetts during the last ten years.

In 1906 the Massachusetts Legislature authorized the adoption of an automatic and interdependent adjustment of the price of gas to consumers and the rate of dividends to stockholders known as the London Sliding Scale. This system was applied to the Boston Consolidated Gas Company. The standard price of gas was fixed at ninety cents and the standard dividend at seven per cent; and for every five cents reduction in price an increased dividend of one per cent was allowed. Under this arrangement the price of gas was reduced to eighty-five cents in 1906 and to eighty cents in 1907, and the dividends paid were eight per cent in 1907, nine per cent in 1908 to 1913, eight per cent in 1914 and eight and one-half per cent in 1915. The subject was investigated in 1915, and the commission reported conditions not satisfactory, insufficient reserve for depreciation, and dividends not fully earned from sale of gas, and further extension of the plan was not recommended. The case was complicated by the combination of various companies, including a holding company, so that no final conclusion as to the advisability or workability of such a scheme was reached. It is, however, a sound business principle worthy of general adoption "that decreased cost and increased profits due to skillful and wise management shall be shared in lower prices to the public and higher dividends to the stockholders."

#### RATE BASES.

Having determined the fair value of the property devoted to the public use and the fair amount of return to be allowed thereon,

a third exceedingly difficult problem remains, namely the fair distribution of the charges to be made.

Equitable rates are defined as "such as will assess the proper gross income upon consumers without discrimination and with due regard to the public interest."

Schedules of rates should be in such form as to be easily understood, and those for the same class of service should be in the same general form so that comparisons of rates may be made. The two bases of rates are:

1. Cost of service, under which each consumer is charged in exact proportion to the cost of service rendered.

2. Value of service, under which each consumer is charged what the service is worth to him, which in many cases is the price necessary in order to secure an equivalent service. It is a generally accepted principle that each class of consumers shall, so far as possible, bear its share of the costs incurred in serving said class, and pay its share of the profit necessary in order that the rendering of such service may be a successful business enterprise. The minimum charge can not be less than the service costs as business can not be done at a loss, and the maximum charge can not be more than the service is worth to the consumer as he will not pay more than it is worth to him. The adjustment of the rates to the varied types of service may not be determined theoretically as a perfect theoretical schedule might fail utterly in practice, through the fixing of rates for some varieties of service so high as to be prohibitive. The details of railroad and utility schedules must be determined on business principles and adjusted to local conditions. The object to be sought is the best and largest service possible to all classes of consumers at the lowest practicable rates.

The cost of serving different classes varies widely as also the value of the service to the customers, and the schedule of rates must recognize the local business conditions in each case.

As in fixing commodity freight rates, the problem often is to determine whether freight rates which will permit the commodity business to be established and carried on are sufficiently remunerative to justify the railroad in rendering the service, so in power service the question often is whether the electric company can supply the power at the rate which the customer can afford to pay or at which substitute power can be obtained with a net gain above the actual cost of rendering the service.

There are a considerable number of earnest advocates of uniform rates on the theory that each unit should be furnished at the same price by the same producer to every customer. On the cost of service theory alone this would sometimes be correct and it requires very careful consideration in all cases. In electric business particularly the cost of rendering a unit of service varies daily. The expenses are practically constant and the output of units varies. Ordinarily in a hydroelectric plant a large additional day load may be taken on at slight additional cost. The peak load

users are regarded as responsible for the size of the plant as it is required for their service, and it is the common practice to seek day customers even at much lower rates.

It is an important question of public policy whether exceptionally low rates shall be made for large service, not otherwise available, which would result in large additions to income and some net profit. Thus far the practice has been very prevalent to make industrial or wholesale rates often without due regard to the cost of rendering the service. This practice requires very careful attention as there is always danger that the independent large user will not bear his fair share of the cost of rendering the service.

### RATE CLASSIFICATION.

The Principal Types of Rates are:

#### 1. FLAT RATES.

Under this system a fixed sum is to be paid annually, semiannually, quarterly or monthly. Flat rates have been based on various conditions of service such as the frontage of the house or lot, valuation for taxation, floor area of building, number of sleeping rooms, number of persons, and number and character of fixtures. The evident inequalities in all these methods have led to an increasing adoption of the meter system or to the use of the meter as a check upon the inequalities or abuses to which any flat rate system is liable. The extreme simplicity of this form has caused its retention and present use. When the actual use is for a known time, and also in the case of small users, this type of schedule is found to be quite satisfactory, if based on the number and character of the fixtures. But for long and short time users or peak load and non-peak load users this form of schedule has been found to be very unsatisfactory.

#### 2. METER RATES.

Under this system the charge is based on the number of units of service rendered. Uniform meter rates afford a very simple form of schedule, and such a system is satisfactory when the conditions of use are practically the same for all customers. This method does not encourage large use of the service, and often the price is prohibitive for large business or manufacturing purposes.

Variable meter rates in which the price diminishes with the increase of the quantity used in blocks or groups of units is in most common use in electric, and is frequently found in gas and water rates. Such a system is often made unfair to the long time small user by making the first block so large as to require all small users

to pay the maximum price. In two block systems the charge for the first block is often made comparatively high to cover demand or installation costs and the charge for the second block very low to induce large industrial or other use.

### 3. TWO CHARGE RATES.

This system is based on the theory that each customer is to be held responsible for that part of the operation and plant investment costs necessary in order that the utility may stand ready to serve him, as well as for the number of units of service actually furnished to him.

This system is a combination of flat and meter rates. The flat or "demand" rate bears some relation to the installation or the amount of service which the utility must stand ready to furnish at the demand of the customer, and the meter charge is based on the units of service actually rendered. When the demand charge covers the fixed charges the service charge is based on the cost of production. The service charge may then be a uniform charge at a moderate price or a variable charge arranged on a block system. A two block system based on the use of the maximum demand is a very fair and satisfactory system as the long time small user is placed on an equality with the long time large user, which is not the case in a common block system based on the first 10, 20 or 50 or more units. This type of rate is readily adjustable to short time or part year service.

### 4. THREE CHARGE RATE.

The cost of conducting utility business may be classified under three heads:

1. Customer charges, varying with the number of customers, such as meter care and reading, billing, postage, collections, etc.
2. Demand charges, varying with the size of installation.
3. Service charges, varying with the actual service rendered.

In conducting a large business it is desirable to arrange expense accounts in these three groups, and this method of classification naturally leads to a three-charge rate. Theoretically this is the most complete and satisfactory type of rate, but it involves so many practical difficulties in application that it has been adopted by comparatively few companies. It forms the fairest basis for a check on any other schedule of rates when the business is on a large and varied scale. Under this system the bills consist of a comparatively small charge for customer costs, and varying charges for demand and service costs.



### MINIMUM BILLS.

The large number of very small users has led most utilities to include a minimum bill in their rate schedules. The object is to prevent dead investment. The minimum bill usually includes customer costs and an allowance for the average amount of consumption by those paying minimum bills. It safeguards to some extent the investment and expense involved in standing ready to serve each customer. The justness of such a charge is generally recognized, but there is difference of opinion as to whether it should be a monthly or an annual charge, a flat rate for each class or depending upon the demand or installation of each consumer. Under a meter system a reasonable minimum charge is a reasonable precaution against loss. When bills are payable monthly, minimum bills are so collected, but when the actual consumption for the year exceeds the sum of twelve minimum bills it is thought that adjustment should be made on the ground that the object of the minimum bill has been secured.

It seems decidedly unfair for one who pays large bills for ten or eleven months in a year to be charged a minimum bill for a month or two when absent, and this is sometimes provided for by waiving minimum bill on notice of intention to be absent.

Flat rate minimum bills are in common use, but it does not seem fair to have the same minimum charge for a demand of 250 and 2500 watts or for a 5-8 inch and a 2 inch meter.

In a few cases only have state commissions considered the question of yearly or monthly minimums. The Massachusetts Gas and Electric Commission in the Boston Edison Electric case ordered a minimum charge to be adjusted on an annual basis, so also the New York Second District Commission in the Buffalo Electric case, and the Maryland Commission in the Baltimore case. The New York Second District Commission said, "The minimum rate should be a yearly minimum and not a monthly minimum. The proper proportion should be charged monthly, however, and an adjustment made at the end of the year." The New Jersey Commission said, "That the making of this (minimum) charge by the month is just and reasonable and is really more equitable than if the charge were made by the year." The Wisconsin Commission said, "As to whether the minimum bill should be placed on a monthly or yearly basis much can be said on both sides. In the instant case, however, it seems advisable to leave it on a monthly basis." Minimum bills should include something more than actual "customer" costs and be on a yearly basis.

### DISCRIMINATORY SCHEDULES.

Before utility rates were placed under commission control discriminatory rates were universally prevalent, and it is estimated that at least one-fourth the schedules now in use violate the long and short haul principle. Some of the more common forms are:

Sliding scales or "Step" schedules, in which the larger includes the smaller amount as:

- |    |                              |                     |
|----|------------------------------|---------------------|
| 1. | "Bills of \$ 5.00 to \$10.00 | 5 per cent discount |
|    | " " 10.00 " 15.00            | 10 " " "            |
|    | " " 15.00 " 20.00            | 15 " " "            |
|    | " " 20.00 and over           | 20 " " "            |

In this schedule a bill of \$20. calls for only \$16 in settlement while a bill of \$19.90 calls for \$16.91; a bill of \$15 for \$12.75 and one of \$14.90 for \$13.41, etc. Such schedules are sometimes made less objectionable by adding the proviso that "the maximum charge under any per cent of discount shall not exceed the minimum charge under the next higher per cent of discount."

- |    |                                                    |                           |
|----|----------------------------------------------------|---------------------------|
| 2. | "To consumers of less than 50,000 cu.ft. per month | \$1.20 flat per M. cu.ft. |
|    | " " " more " 50,000 " " "                          | 1.10 flat per M. cu.ft."  |

Under this schedule a consumer using 49,900 cu. ft. pays \$59.88 while a consumer using 50,100 is charged only \$55.11. Such schedules may be improved as above or by the proviso that "the minimum charge under any per cent of discount shall not be less than the maximum charge under the next lower per cent of discount."

Such schedules have been disapproved by various state commissions and they should be superseded by block or other proper form of schedule.

#### PROMPT PAYMENT DISCOUNT.

It is a common practice to adjust schedules to a discount on prompt payment, the rate of discount varying from five per cent to twenty-five per cent, ten per cent being most common, and the time limit ten or fifteen days. This appears to be a good working plan and decidedly preferable to the scheme of adding five to ten per cent if the bill is not paid in ten or fifteen days following the date of the bill. A sliding discount to large users is some times conditional on prompt payment. Such a schedule meets with general disapproval.

#### ELECTRIC RATE SCHEDULES.

The development of rate theory and practice already outlined has been mainly occasioned by the marvelous progress in the extent and variety of use of electricity. Since electricity can not be cheaply stored it is necessary that the plant equipment be sufficient to generate the maximum demand at any moment. The number of hours of daily use and their relation to the peak load are important in determining the cost of production. It has been estimated that under certain conditions it costs two and one-half times as much to furnish a given unit in one hour as to furnish the same unit in three hours, hence it is important to provide for the long and

short time users in the schedules. The type of plant, whether the power is water, steam or a combination of the two, has to be considered. The actual conditions under which each plant operates must determine the type and details of each schedule.

The four principal types of schedules already considered are used by electric utilities together with endless modifications and variety of details.

Flat rates are usually based on the number of lights installed or the wattage of the connected load often with some classification as to use. The simplicity and definiteness of this type of schedule makes it popular with many users, but a meter is necessary as a check for any extended use. The prices vary with each plant and no comparison of rates is possible. Meter rates are coming into general use, except where amount of service is definitely known as in street and sign lighting.

Uniform meter rates are principally used by the small companies. The range of meter rates is very striking. The kilowatt sells at from 25 cents to a fraction of cent, and the question is often raised whether such a diversity of prices is likely to be permanent. Block meter rates are in most common use, and are very satisfactory, except when the distinction between long and short hour customers is important. Large numbers of blocks have been used, but the tendency is to reduce to two blocks or three at most. Such schedules encourage larger use particularly for domestic purposes as flat irons, toasters, etc., when the secondary rate is made sufficiently low.

#### EXAMPLES.

10 cents per kw. h. for	1st 20 kw. h. per month
4 " " " "	" excess of 20 kw. h. per month
	or
10 cents per kw. h. for	1st 10 kw. h. per month
8 " " " "	" next " " "
6 " " " "	" excess of 20 kw. h. per month

Minimum bill 75 cents per month

Discount 10 per cent if paid in 10 days.

Demand rates are found to be very satisfactory for extended and varied business. The demand is either measured or estimated in kilowatt or horse power units. The term "Wright Demand Rate" has been applied to a one charge rate in which the energy charge is on the block system graded on the demand.

#### EXAMPLE.

10c per kilowatt hour up to equivalent of 1st 30 hours use of maximum demand per month

5c per kilowatt hour for excess of equivalent of 1st 30 hours use of maximum demand per month

This form may be extended to any number of blocks desired.

The term "Hopkinson Demand Rate" has been applied to a two charge rate, consisting of a charge based on the capacity of the customer's installation, plus a charge for energy used. Both the demand and the energy charges may be on the block principle.

#### EXAMPLE.

Demand Charge	
\$2.50	per kw. for 1st 40 kw. of the maximum demand per month
2.00	" " " excess of 40 kw. of the maximum demand per month
Energy Charge	
5c	per kw.h. for 1st 1000 kw.h. per month
3c	" " " next 3000 " "
1c	" " " excess of 4000 kw.h. per month

The three charge rate has been called the Doherty Rate.

#### EXAMPLE.

Consumer charge	\$1.00 per month
Demand " "	3.00 " "
Energy " "	5 cents per kw.h.

Another type of rates is based on the product turned out by the electric current furnished.

The maximum meter rate for lighting ranges from 5.5 cents to 25 cents per kw.h., largely from 8 to 13 cents per kw.h., and the minimum bill is commonly 50 cents, 75 cents, \$1, or from \$6 to \$12 per year. Of the 138 cities in the United States having a population of 40,000 or over, minimum bills are monthly in 90, yearly in 11, variable in 8 and daily in 1. Twenty-four of these cities have no minimum bills and 4 are not reported.

Power rates are usually very much lower than lighting rates, and various types of demand rates, block, and uniform meter rates are in use. Among the reasons for lower rates for power are that it is usually long hour and off peak load service in large amounts, and ordinary rates would be prohibitive.

Meter rates at present are not comparable on account of the extreme variation in maximum rates, and number and variety of blocks.

Street lighting rates have been termed "good will rates." They should be determined according to the principles used in establishing other rates. The lamp-year unit is commonly used and the range of prices is from \$8 to \$100 per lamp per year varying with candle power and locality.

#### GAS RATES.

In the gas business a comparatively large part of the expenses varies with the amount of product so that any large waste such as

is liable to occur in the use of flat rate schedules would cause a considerable increase in expenses. Hence a meter rate is recognized as the only satisfactory rate for gas except where consumption is known as in street lighting. As gas can be stored conveniently the peak load factor is not important in gas rates. Uniform meter rates are in common use, but a block system is often used, including lower rates for industrial and domestic uses other than lighting. The increased use of electricity for lighting is tending to single low rates for gas for other purposes. Gas rates range from 75 cents to \$1.50 per 1000 cu. ft. with few exceptions. Minimum gas bills vary with size of meter, ranging mainly from 25 cents to \$1. per meter per month.

### WATER RATES.

Flat rates still prevail in water utilities though meter rates are much used. Flat rates are based on the number of rooms, persons, faucets, frontage and number of stories, assessed valuation or rental value, and meter rates on the daily, monthly, quarterly or yearly consumption of water. Meter rates are much more just, but the cost of meters, care, reading, liability to freeze in cold climates, liability to leakage, etc., have a strong tendency to limit their use to checking of unusual wastage, unless the water supply is limited.

Meter rates are often uniform, but block rates are used as in the case of gas to make lower rates to encourage large use. Two charge rates may be necessary to meet certain conditions. In a gravity system with unlimited water supply large amounts may sometimes be furnished at very low rates to the advantage of all concerned. The great diversity of bases of rates and forms of schedules renders any comparison of water rates impossible.

The use of water for fire protection is an important feature of water supply, and there is a wide variety of practice in this branch of the business. In a municipally owned plant it is often not taken into account or is regarded as offset by relief from taxes.

In some instances the full cost is charged, which is the proper method of accounting. The problem then is principally one of valuation to determine what proportion of the plant or amount of investment should be assigned to fire protection.

The Wisconsin commission acts upon the principle "that a water company in supplying the two services,—fire protection and domestic service—is entitled to have the cost of these services estimated on the same commercial basis." In the Queens County, N. Y. Rate Case the principle adopted was "that the company was organized primarily for the sale of water to private consumers for a profit, and the city was entitled to get fire protection at its actual cost as an incidental or surplus service." In this latter case it was found that the city should contribute 21 per cent of the gross income. It is very desirable that the

principle of proper payment for fire protection be universally adopted. It is important for municipal as well as private plants, as securing a more equitable adjustment of the costs or rendering the entire service. Meter rates range from 5 cents to 35 cents for 1000 gallons, and hydrant rates from \$20 to \$60 per year, with few exceptions.

#### TELEPHONE RATES.

Flat rates are in general use in telephone service. Exchange or base rates usually apply to a radius of from one to two miles or within city or village limits. Residence exchange rates range from \$6 to \$36 per year, but they are mainly \$12, \$15 or \$18 per year, for one or two party service. Business rates range from \$12 to \$48 per year with few exceptions. On rural lines \$12 per year is a common charge, but \$15 and \$18 per year are being adopted in some localities as necessary in order to maintain proper service. In some cases stockholders have been allowed reduced rates, but this practice is disapproved by state commissions.

The mileage charge for service outside the base rate area of the exchange ranges from 50 cents to \$2.50 per year per  $\frac{1}{4}$  mile for different classes of service. Extension bells and sets involve an extra charge ranging from 50 cents to \$5 per year.

Toll rates for 5 minute messages are applied to zones on the "length of haul" principle. Example, 5 cents for 5 to 10 miles; 10 cents for 10 to 15 miles, etc. In many cases night service is offered at reduced rates to encourage larger use. Example, day rate 35 cents, night rate 20 cents. With the necessary improvements in service off the main lines, many of the lower rates are likely to be eliminated.

Measured service for business ranges from 2 cents to 6 cents per message, and block rates are used. Example, first 600 messages, \$24; next 2400, 3 cents each; excess of 3000 messages, per year, 2 cents each.

The inequalities in amount of service under flat rates are not as flagrant in residence as in business service, but some limit should be set to the number of messages allowed at a given rate even in residence service. Business service should be largely on the measured basis, as otherwise rates must be well nigh prohibitive for small users. Summer or part year service presents difficulties which may lead to a two-charge rate involving cost of readiness to serve and of actual service rendered.

#### ELECTRIC RAILWAY RATES.

Flat rates are in use, and the amount of transportation offered for one fare is variable. The most common charge is 5 cents for

a zone varying from 2 to 5 miles, but the range is from 3 cents to 8 cents per fare zone. A free transfer covering a second zone is not uncommon. Commutation tickets at the rate of 21 to 25 for \$1 and school tickets at about half regular price are in use in many localities. Theoretically a rate system in which the same charge is made for a half mile as for a five or ten mile ride is not satisfactory, and it is an important question whether these rates should be on a strict mileage basis, as is the case in steam railroad rates.

#### RECOMMENDATIONS

1. That united effort be made to secure uniformity in types of schedules for the different classes of public utility services, and to reduce those types to simplest form.
2. That meter systems be used so far as practicable.
3. That minimum bills be on a yearly basis.
4. That rates for municipal utility service be based on the same principles as the rates for private utility service.

THOS. W. D. WORTHEN  
*Chairman.*

M. H. AYLESWORTH,  
ROBERT C. BACON,  
JOHN J. TREACY,  
C. W. KUTZ,

*Committee.*

The PRESIDENT. What will you do with this report?

Mr. EDWARDS. Speaking for the National Electric Light Association, I should like to compliment the Chairman of this Committee on this very valuable and full report. It reads very much like the reports presented at the meetings of the Association which I represent here, the National Electric Light Association. I am particularly pleased with the opinion of the Committee as expressed on page 4:

"It is, however, a sound business principle worthy of general adoption 'that decreased cost and increased profits due to skillful and wise management shall be shared in lower prices to the public and higher dividends to the stockholders.'"

I am thoroughly in accord with that. I should also like to call attention, to the proposition that a basis for rates is "value of service, under which each consumer is charged what the service is worth to him."

I believe there is a great deal more in that proposition than has been given consideration by commissions generally. The

time is not sufficient to allow me to dwell on that matter very much, but I should like to commend that to the Association generally.

Mr. HALL, of Nebraska. Will you tell us what you mean, and how you would measure the value of the service to the consumer?

Mr. EDWARDS. By the price which he can afford to pay, or for which he can get similar service by other means. (Laughter)

The PRESIDENT. This promises to be interesting, but under the rule under which we are operating the hour for adjournment has arrived.

Mr. HALL, of Nebraska. May I ask you not to drop that question of value of the service, and before this Convention adjourns, let us consider it.

The PRESIDENT. I have no doubt in the world that there will be a full discussion of this very excellent and admirable report.

Whereupon, at 5 p. m., November 14, 1916, an adjournment was taken until November 15, 1916, at 10 a. m.

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## SECOND DAY'S PROCEEDINGS.

*Washington, D. C., November 15, 1916, 10 a. m.*

The convention resumed its session.

## PUBLIC UTILITY RATES.

The PRESIDENT. The unfinished business is the report of the Committee on Public Utility Rates, submitted yesterday afternoon by Mr. Worthen of New Hampshire, and the pending motion is to adopt the report.

Mr. HALL, of Nebraska. I begin now where we left off last evening, on the question of the value of the service, to be taken as one of the bases for rate making. I asked the question, how would you measure the value of the service to the consumer? I asked that question in all sincerity and good faith. I have never known, nor do I know now, what is meant by the term "value of the service". If I understand it correctly, and if I have thoroughly in mind what the other fellow means when he uses the term, there is only one thing left for me to do. I have one alternative, and that is, I can take the service at its value to me and pay for it on that basis, or, speaking of passenger train service, I may walk instead. Or, if we are considering freight, I may take the freight service and pay for it on the basis of the value of the service to me, or I may transport my freight by ox team or wagon service, such as we had across the prairies of Nebraska when I was a little child.



The other day we had a great pageant in Omaha. I sat in the reviewing stand just behind President Wilson. That pageant was several miles long. It took one hour for it to pass. A part of that pageant was a passing show representing the development of the movement of traffic, from the early days in Nebraska down to the present time. Naturally it started with the ox team, and the great mule team of the early days, and so on through to railroad transportation. It was instructive, and it was really a wonderful pageant. I am sure that President Wilson came back to Washington pleased with what he saw. It occurred to me then, as it has before and since, that the value of the service would have to be measured by the way it was performed before the steam railroad lines were built in the state of Nebraska. When I was a child the people of eastern Nebraska transported their freight from St. Joseph by mule team. I am sure that if the cost of that service were taken as a basis, and compared with the cost of transportation by steam railroad, and then the price made on the basis of what it would have cost to transport the traffic by mule team or dray wagons, certainly the railroad rates would have to be very, very much above what they are today. And if I were to compare the passenger service from the city of Lincoln to Washington with what it would have cost me to come by automobile, the passenger rates would certainly have to be raised to a point very much above what they are today. I doubt whether any one could transport me in an automobile from Lincoln to Washington for less than ten cents a mile. Possibly it could be done in a Ford. I think a Ford machine could carry passengers for about seven cents a mile on long runs, and take care of the maintenance and depreciation, and the chauffeur, and earn a return on the investment.

So I do not believe I understand what is meant by the expression "value of the service." Speaking for a moment of telephone service—and I am in the presence of one of the leading telephone men of the country, Mr. Woods of Lincoln—if telephone service could be rendered for one cent a call on a measured basis, and that one cent a call would pay for all operating expenses, maintenance, depreciation, loss and damage, and such a return as we would all agree upon as a fair return to those who had made the sacrifice to the public, who had invested their money, their skill and their ability and their labor—if one cent a call would do all those things, and the people were paying the one cent a call—certainly the public would be doing its full duty. What more could be expected of the public? I do not see that the question of the value of the service enters into it, or else I do not know what the term means.

The PRESIDENT. Is there any further discussion?

Mr. SHAW, of Illinois. Mr. President, I will take up briefly the recommendations of the report, the first being that united efforts be made toward uniformity in types of schedules for the different

classes of public utility service, and to reduce those types to the simplest form. With the last clause "reduce the type to the simplest form" I am in hearty accord; but as to whether this Convention should go on record as recommending to all the states that there should be uniformity in types of schedules, I am somewhat in doubt. It appears to me that possibly the types of schedules are affected and influenced by local conditions and local situations. Types of schedules may vary in different sections of the state. For instance, take electricity. The two common forms of schedules for electricity are perhaps what are known as the block system and the Wright maximum demand system. Experience in Illinois indicates that perhaps the Wright maximum demand schedule might be satisfactory in large cities like Chicago, and might be quite unsatisfactory in local or rural territories. The Wright maximum demand is based upon the first thirty hours of use of the maximum demand, and when it was first initiated it was the intention that the maximum demand should be measured by the maximum demand meter. When the system was first put in, in Chicago, the maximum demand meter was used; but the experience of the company was that the maximum demand meter proved too expensive. After experimenting and taking data from the readings of maximum demand meters, tables were compiled from the averages of these meter readings. If a dwelling had so many openings, fifty for example, the maximum demand under those conditions might be ten or twelve kilowatt hours, and so on down.

Now if we go into a locality that is rural in character, where every one knows everybody else's business to a certain extent, it is hard to explain such maximum-demand theories. For instance, if there be two neighbors whose houses are similar—possibly they may have about the same sized families—and they may use practically the same amount of kilowatt-hours of electricity during the month—perhaps fifty kilowatts. If one householder, by reason of consulting his own convenience, has openings in hallways, closets, and cellar, and has an extra number in his bed rooms, that man is penalized, because, having an excess number of openings, it increases his maximum demand, which arbitrarily increases his charge to a higher rate. For instance, the house with the large number of openings might have on its bill twenty kilowatt hours, at ten, twelve or fifteen cents, or whatever the rate may be on the maximum demand, while his neighbor with a lesser number of openings might have only ten kilowatt hours or perhaps less, at the primary rate and the other ten kilowatt hours at the secondary rate. Now it is hard to convince the the man receiving the higher bill that the difference between the two is reasonable and that one consumer should pay more than the other for a twenty kilowatt-hour consumption. And a rank injustice occurs whenever in actual fact, the man with the large num-

ber of outlets may be a more conservative user of the maximum demand.

We find also that electric utilities have changed their maximum demand scheme in some cases from openings to watts. In other words, the experience of certain companies led them to believe that it was more scientific and equitable to change the openings to wattage as a maximum-demand basis—in other words, that checking up a consumer's premises at periodic intervals and finding the exact wattage of the lamps was better than either the total outlet scheme or no scheme at all. But the wattage basis still leaves an opening for discrimination. For instance, it has happened in cases before the Commission, that the evidence showed that the utility had not checked either the openings or the wattage for several years. Also it has been whispered around that where competition for various reasons, is sharp, during the application of the estimated maximum demand, in the absence of maximum demand meters, utilities are able to discriminate to the extent of meeting extremely low competitive rates. There may be very good reasons, however, for using the maximum demand rates in industrial centers, to measure the electric current that is used for industrial power purposes. I am simply citing these illustrations to show that there may be quite adequate reasons for different forms of schedules in different localities, even in the same state. So, considering all these facts, I doubt seriously whether the Convention should go on record as recommending a uniform type of utility-rate schedule. What the public expects, and what it should have, is some form of schedule that is simple, that can be easily interpreted, and that does not breed suspicion.

As to recommendation No. 2, that meter systems be used as far as practicable, I believe we all agree to that.

As to recommendation No. 3, that minimum bills be on a yearly basis, I think that is open to argument. There are reasons for considering bills both on a monthly basis and on a yearly basis. My own idea of determining a minimum bill is to have it embrace what the Committee have on page 6 included under the heading "Three Charge Rate":

"1. Customer charges, varying with the number of customers, such as meter care and reading, billing, postage, collections, etc."

My idea in considering the amount of the reasonable charge for minimum bill is properly taking into account the charges enumerated in No. 1 under that head. When it comes to other charges such as "demand charges varying with the size of installation", or "service charges, varying with the actual service rendered", I believe those items most properly belong to the higher blocks in the rates, or that the blocks should be so adjusted as to take care of those other charges, outside of customer charges. Also in considering the minimum charge, cognizance should be taken in connection with the other

items which constitute customer charges of the amount of electric current, if it be electricity, or the amount of gas, if it be gas, that the consumer may use. If there be a charge for taking care of meters and so forth, and if a customer does not use sufficient current or sufficient service to take care of all those charges, that would not be made up in any yearly average.

Now I turn to the last recommendation, No. 4, on page 12—

"4. That rates for municipal utility service be based on the same principles as the rates for private utility service." That is all right in theory, and I would endorse the theory; but when we get into the actual practice, we run up against some snags. The existing charges for municipal service, especially in states that are new to the situation, have been built up on contracts and ordinances heretofore granted by the municipalities, and in many instances in formal rate investigations disclose that the amount of money which the municipality can raise by taxation, available for such street-lighting or fire-protection purposes, is limited, should the Commission undertake to increase the municipal rates materially, and to make adjustments along lines that might be termed technical and scientific, the municipality is placed in the unfortunate position of having no funds with which to meet those increased rates. The solution of the question, at the best, as I view it, is simply an adjustment between what the public should pay and what the private consumers as a whole should pay.

Without further discussing the details of this report, I move as a substitute that the report be received and printed.

The PRESIDENT. You move as an amendment to the motion to adopt the report, that the report be received and printed?

MR. SHAW, of Illinois. Yes.

MR. THOMPSON, of Illinois. I second that motion.

The PRESIDENT. Is there any further discussion? The question is on the amendment offered by Mr. Shaw of Illinois, that this report be received and printed.

The amendment was unanimously agreed to.

The PRESIDENT. The report will be received and printed.

## SAFETY OF OPERATION OF PUBLIC UTILITY COMPANIES.

The PRESIDENT. We will now hear the report of the Committee on Safety of Operation of Public Utility Companies, which will be presented by Mr. Carr of New York, Second District, the Chairman.

Mr. Carr of New York presented the following report:

At the annual meeting of the Association held in October, 1915, its constitution was amended and provision was made for some new committees, among them being a Committee on Safety of Operation

of Public Utility Companies. That committee, as its name signifies, is expected to report to the Association upon the subject of safety of operation of utilities other than steam railroads, viz: electric railways, telephone, telegraph, gas, electric and water companies as well as other public utilities coming under the jurisdiction of the various state commissions.

At the outset, your committee deems it proper to state that the subject involved covers such a vast and extensive field that it probably cannot be dealt with satisfactorily either from the standpoint of discussion or recommendation.

Some of the state commissions do not have jurisdiction over all classes of public utilities so that they are unable to deal with safety questions for those utilities over which they have no control.

In recent years, it has been apparent to the wise and far seeing operating man that there was abundant opportunity to save money for his corporation by improving the operating conditions for employes from a safety standpoint. A dollar saved in this way is equivalent to a dollar earned and the men connected with public utilities have found that it is far easier to save money by providing necessary safeguards than it is to earn the money to pay the damages arising out of accidents which are directly due to unsafe operating conditions. Probably the corporations which have made the greatest advances in improving the safety of operation are the electric street railways and the electric light and power corporations. This is largely due to the fact that they deal with the unknown element "electricity" which has the power to do an untold amount of damage if not properly controlled. That they have made wonderful improvements in recent years in safeguarding their operations is a fact too well known to require comment. In recent years statutes have been enacted in many of the states for the purpose of improving the safety of operation for both employees and the traveling public. Probably one of the most powerful influences in improving operating conditions for employes has been the enactment of workmen's compensation laws in many of the states of the union. It has been made incumbent upon the corporations to improve such operating conditions because of the heavy penalties which might be imposed upon them under the provisions of these compensation laws; beyond all this, however, those in charge of the operation of public utilities have learned that it is far more economical to prevent their employes as well as the public from sustaining injury and at the same time the efficiency of the organizations has been increased by the efforts which have been made to keep employes in good bodily health. In addition to this, the humane element has largely entered into the situation. The rapid improvement in operating conditions from a strictly operating standpoint has also reduced the possibility of accident to both employees and the public.

While statutes have been enacted in many states for the purpose of improving operating conditions in regard to safety, yet super-

vision of the operation of public utilities by the commissions is far from universal or uniform. It is the view of this committee that the state commissions can render valuable service by examining, reporting on and making recommendations relative to the operation of public utilities. It would seem that this is necessarily the proper part for the commissions to play in the matter. It is only in cases of flagrant neglect that the commissions which now have the power would feel warranted in imposing orders requiring expenditures to be made for the sole purpose of promoting safety. The Commissions should have full power and authority to make orders covering these matters whenever they seem to be required. The corporations themselves are primarily interested in conducting their operations so as to prevent injury to employees, to the public and to property. Many instances could be cited where valuable recommendations with regard to operations have been made to the corporations by the commissions. We believe this will be frankly admitted by many of the corporations. It frequently happens that these recommendations involve expenditures which are somewhat burdensome upon the corporations but nevertheless they relate to things which ought to be done for the ultimate benefit of all concerned. Public utilities such as street railways and gas and electric corporations are and have been endeavoring for years to formulate certain standards under which to carry on their operations to obtain the best results for all concerned; that this is the proper course to pursue is the firm belief of your committee. This work has been systematically carried on through the medium of state and national organizations with which the corporations are connected. The standards so adopted are usually easily applicable to all the corporations of the class to which they apply, whether the corporation is one doing a large or small volume of business. Nowadays when the operating man has pointed out to him an opportunity for improving his operating conditions from a safety standpoint, he rarely ever insists upon continuing along in the old way with the dangers incident thereto rather than to adopt the suggestions which are made to him along these lines. Probably the greatest point of conflict in this respect is where mechanical safeguards are recommended to take the place of an employee. Each of them may sometime fail. If the mechanical safeguard is in good operating condition, it will almost always perform its functions. On the other hand, if the man upon whom the responsibility rests performs his functions, accidents will rarely ever occur so far as he is physically able to prevent them. There is an element of weakness in each as it is well recognized and it is difficult to say in many instances which should be the one depended upon.

It is a well known fact that the "Safety First" slogan has spread broadcast throughout the country and that the public is being educated to help in every way in its power to make operating conditions successful and safe. There are so many opportunities for the

corporations to benefit, financially and otherwise, by making their operating conditions as safe as they possibly can be that we feel that the matter may be safely left with them primarily and that the work of the commissions should be principally devoted as hereinbefore stated, to investigating operating conditions, from time to time giving advice to the corporations with reference to such operations and make recommendations concerning them whenever it seems proper to do so. If the corporations understand that this is the attitude of the commissions, there is no reason why there should be any friction between the interested parties, and on the other hand, the spirit of co-operation will tend to produce the greatest benefit for all concerned.

Respectfully submitted,

JAMES O. CARR,  
C. F. FOLEY,  
RALPH W. E. DONGES,  
SHERIDAN S. KENDALL.

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Mr. CARR, of New York. Three of the members of my Committee have joined me in signing this report. One member of the Committee, Mr. Loveland of California, wrote me a letter in regard to the report, which I submitted to him, and he asked that I present this letter as expressing his views upon this subject, and his reasons for not signing the report of the Committee. In other words, he wished to have it read as a dissenting report, or I presume, more properly speaking, a minority report. This letter is as follows:

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA,  
SAN FRANCISCO.

October 19, 1916.

"Hon. James O. Carr,  
Chairman Committee on Safety of Operation of Public Utilities,  
c/o State of New York Public Service Commission,  
Albany, New York.

"Dear Sir:

"I am in receipt of your favor of October 11th, to which I now beg to reply.

"There is much in the report, copy of which you sent me, with which I agree; but I cannot see my way clear to give it my unqualified approval. I refer particularly to the language found on page 3 of the report, as follows:

"It is the view of this committee that the function of each of the state commissions is to examine, report on and make recommendations to the corporations rather than to attempt to prescribe rules and regulations for the operation of public utilities. It would seem that this is necessarily the proper part for the commissions to play in this matter. The corpo-

rations themselves are primarily interested in conducting their operations safely so as to avoid injury to employees, to the public and to property. The Commissions ought not to be expected to and ought not to undertake to prescribe rules for the operation of these utilities because primarily it is the duty of the corporations to prescribe the rules under which they operate and, on the other hand, such action on the part of the commissions would be an attempt to usurp the functions of management of the corporations which is prevented in many jurisdictions. The position which should be occupied by the commissions in this regard is that of an impartial adviser rendering assistance and making recommendations based upon investigations which they have made and which may be of aid and assistance to the corporations."

That paragraph, as I had drafted it, was I presume essential from my point of view, inasmuch as the highest courts of the state of New York had most positively notified us that we were overstepping the bounds of propriety as well as of the statute when we undertook to tell the corporations how they should manage their business, and it was with that particularly in mind that I have drafted this paragraph of the report, attempting to show that from our standpoint we should play the part of advisers in recommending improvements in operation, rather than undertake to dictate the manner in which the corporation should carry on its business; and notwithstanding the form in which the report was finally presented, I still think that is the proper attitude of the Commission. Mr. Donges of New Jersey, Mr. Foley of Kansas, and Mr. Kendall of Colorado very kindly aided me in drafting the report, and in making suggestions which are now embodied in the report as it stands, and I think we all agree that in its present form it represents the matter as it should be.

Continuing with Mr. Loveland's letter, he says:

"I am unable to harmonize the above statement with the statement found on the first page of the report, as follows:

"'At the outset, your committee deems it proper to state that the subject involved covers such a vast and extensive field that it probably cannot be dealt with satisfactorily either from the standpoint of discussion or recommendation.'"

I do not see the connection between the two, but I have not had an opportunity of discussing the matter with Mr. Loveland, so I have not his point of view. Now I continue with his letter:

"The assumption found in the report that public service corporations, because of their being 'primarily interested in conducting their operations safely so as to avoid injury to employees, to the public and to property', will so conduct their business is not altogether warranted by experiences of the past with such corporations. The corporations have to-day no less primary interest in safety of operations than they have had in the past yet it has been necessary for legislative bodies to take the initiative in writing into the statutes of the nation and of the various states laws looking to the safety of employees and of the public. I do not consider it necessary to burden this letter with citations but certainly the Full-Crew bill and various



Head-light bills, Compulsory Use of Air Brakes, the Safety Appliance Act, by which standards generally were adopted, the Locomotive and Boiler Inspection Act, and many other laws passed in the interest of safety, will immediately recur to you.

"In our report we are considering public utility corporations other than steam railroads, but as to the operation of many public utilities other than steam railroads the Legislatures of various states have found it necessary to require of the public utility corporations certain things in the interest of safety, the demand for which the utility corporations had not voluntarily met.

"In California the Railroad Commission could not properly discharge the duties imposed upon it if it did not, when the necessity arose, prescribe rules and regulations for the safe and efficient conduct of public utility corporations. That, however, is not my only reason for failing to agree with the language of the report quoted above.

"The desire of the directors of public utility corporations to increase dividends is a natural one and not infrequently leads them to permit that desire to overcome wise discretion in the matter of safety measures which increase maintenance and operating expenses.

"On page 2 of the report, in referring to electric street railways and electric light and power corporations, you say that they have made wonderful improvement, in recent years, in safeguarding their operations but, in the next sentence, you subscribe to my point of view which is that legislatures and regulatory bodies, created by legislative enactment, are charged with the duty of seeing that employes and the public are protected in the operation of public utilities when you say,

"In recent years statutes have been enacted in many of the states for the purpose of improving the safety of operation for both employes and the public".

You further support my view when you refer to the enactment of the Workmen's Compensation Law in different states, and say,

"It has been made incumbent upon the corporations to improve such operating conditions because of the heavy penalties which might be imposed upon them under the provisions of these compensation laws".

"What was the necessity for the passage of such laws if public utility corporations, because they are "primarily interested" in their operations in the matter of safety, could be trusted to operate their utilities to the greatest reasonable extent in the interest of safety for their employes and for the public?

"I agree with you that it is far more economical for public utility corporations to prevent their employes, as well as the public, from sustaining injury and that the efficiency of their organizations is increased by promoting safety, and that the humane element enters into the situation, but I cannot agree with you that these matters can or should be left to the public utility corporations. As a justification for the position which I am taking, I beg to quote Section 42 of the Public Utilities Act from which the State Railroad Commission of California derives its jurisdiction and under the provisions of which it does its work.

"Sec. 42. The commission shall have power, after a hearing had upon its own motion or upon complaint, by general or special orders, rules or regulations, or otherwise, to require every public utility to construct, maintain and operate its line, plant, system, equipment, apparatus, tracks and premises in such manner as to promote and safeguard the health and safety of its employes, passengers, customers, and the public, and to this end to prescribe, among other things, the installation,

use, maintenance and operation of appropriate safety or other devices or appliances, including interlocking and other protective devices at grade crossings or junctions and block or other systems of signalling, to establish uniform or other standards of construction and equipment, and to require the performance of any other act which the health or safety of its employees, passengers, customers or the public may demand."

"To sum up my views on the subject I would say that to secure uniformity in the operating methods of various classes of utilities subject to regulation by the commissions, it is often necessary that the initiative be taken toward such end by some body having authority, and it would appear that the Commission holding jurisdiction would be the proper source for the initiation and forming of rules and regulations having as an object the safety of operation and that the co-operation of the utilities should be expected and required. It is not thought that the commissions should enact and promulgate regulations entirely on their own initiative but that tentative rules and regulations should be prescribed, conferences held with all representative utilities at which conferences all points in the suggested rules and regulations could be discussed, be amplified or modified, to the end that the final determination might be incorporated into an order which would specify definite rules and regulations which would be reasonable and effective, both from the standpoint of the commission as the representative of the public and of the utilities themselves.

"If these matters are left to the utilities themselves no uniform rules or regulations will be formulated, nor will the matter receive any serious consideration with the possible exception of some utility that is forcibly brought in contact with the subject by reason of some serious casualty. The various commissions are the proper sources from which the initiative should arise and by co-operation with the utilities regulations can be formulated which will be uniform in their application and for the general good. The system is somewhat analogous to that formerly existing as regards the accounting systems of the steam railroads. Each carrier kept its accounts in the manner best suiting its own requirements, made its various segregations of expenses and earnings in such detail as thought necessary for its own purposes, and while in general each carrier was satisfied with its accounts, there was no uniformity. At present under the classifications prescribed by the Interstate Commerce Commission all carriers reporting to that Commission keep their accounts in absolutely a uniform manner as prescribed by outstanding classifications. These classifications were arrived at and agreed upon as a result of conferences between the accounting representatives of the Commission and those of the respective carriers. Had the matter of uniformity of accounting methods been left with the carriers and had not the initiative been taken by the Interstate Commerce Commission to hasten the preparation of a uniform system of accounts, the old system of individuality as regards methods would still prevail.

"Mr. Max Thelen, the president of this commission, and Mr. Edwin O. Edgerton, commissioner, will be in attendance at the meeting of the National Association, and at my request will present a copy of this letter as my views on the situation and my reason for not signing the report of the committee, in other words, a dissenting report. If you prefer, after reading your report, to read this letter, I shall be glad to have you do so instead of having it read by a representative of the California Commission.

"With assurances of distinguished regards, I am,

"Sincerely yours,

"H. D. LOVELAND,  
"Commissioner."

As a last word on the report, I do not believe that Mr. Loveland, in the final analysis, disagrees with my views at all on the question of the safety of operation of public utilities. Apparently there is some difference in the provisions of the California statute in this respect, and it may be that the California Commission has had certain experiences with its corporations which have seemed to make it incumbent upon that Commission to make certain rules and regulations for incorporation. That is a matter which pertains entirely to that Commission. If it has found such a situation in California, and in order to carry out the duties of the Commission in safeguarding the public as well as employees, it has been found necessary to make these rules and regulations, I do not think any of us would disagree with the proposition that that is a proper course to pursue.

On the other hand, the intent of this report as I have presented it is to indicate that from our experience we believe that by co-operation with the corporations, and by suggestions, and as Mr. Loveland says by conferences, operating conditions will in nearly every case be so carried out as to produce safety for all who are interested, the public, the employees of the corporation, and the corporation itself. I do think it is going too far to require the Commission to undertake to prescribe rules and regulations for the corporations. That is as I view it from my standpoint. Now I am talking as an individual. From my standpoint the Commission has no right to tell the corporation how it shall conduct its business. It has the right to make orders requiring the corporation to do certain things; but when it commences to prescribe rules and regulations for the conduct of its business as such, I think it is going too far. It may be that I am all alone in my views on that proposition, but nevertheless I maintain them. The same result is accomplished by the general order of the Commission, and then the corporation can make its rules and regulations as it sees fit. If it carries out the orders of the Commission, it is doing what the Commission requires.

The subject is one, however, which cannot be properly dealt with by the Committee, as I see it. The subject is so broad, so large, and all the corporations are so vitally interested, that I firmly believe they have much more at stake, they have much more incentive to study the question of safety than any of the commissions can possibly have, because the corporations are the ones directly affected through their pocket books; and what affects them through their pocket books is likely to obtain quite careful consideration.

Another thing which is tending to cause great strides to be made in this direction is the formation of the National Associations of the various classes of public utilities which deal with these subjects in a broad way, and as the result of investigation and consideration and study, lead to the adoption of certain standards, which in turn are almost uniformly adopted by the corporations, so that these great national associations are doing a work which in a way relieves

the commissions from doing it, because the commissions are getting the direct benefit of that work, and being kept closely in touch with it; and in the event that the local corporations do not comply with the rules for safety which have been adopted as national standards, the commissions are in a position to bring the matter to the attention of those corporations, and urge the adoption of those standard rules.

So I do not feel that the report which I have presented to the Association is of any real, practical value. It is only a summary of a few ideas upon the situation, and I may say that I regret being obliged to file a report which to my mind is of no real, constructive value to this Association.

The PRESIDENT. I am sure that the Association does not feel that way, Mr. Carr. Whether the members of the Association agree with your views or not, they do consider them of value. Is there any further discussion? Do you make a motion, Mr. Carr?

Mr. CARR, of New York. I do not know whether there is anything in the report which should be adopted. I move that the report be printed and filed.

Mr. BRISTOW, of Kansas. Does that include the minority report as well?

The PRESIDENT. Yes. You have heard the motion that these papers be received, filed and printed.

Mr. TAYLOR, of Nebraska. Do I understand that will end the discussion?

The PRESIDENT. Oh, no; the subject is up for discussion at the present time.

Mr. TAYLOR, of Nebraska. I merely rise to express my appreciation to Mr. Carr and his Committee, for the very concise and to my mind illuminating discussion of the fundamentals of this question; yet because of the action of our legislature I am compelled to join with the dissenting opinion of Mr. Loveland. I had hoped that we might have considerable discussion of this question, in as much as we are wandering more or less aimlessly in Nebraska, seeking some way out of the maze of difficulties that confront our administration of the statute which imposes upon the Commission the duty of regulating these matters.

As Mr. Carr reached his conclusion that the matter should be left primarily with the utilities, the thought that first occurred to me is that in Nebraska, which is just now upon the threshold of electric development, many men entirely inexperienced in transmission line construction are entering the field; and while they are not disposed to be arbitrary or contrary, yet we find that, through their ignorance, they are constructing lines that are a menace to the lives both of the employes and of the public, and a menace to good operation.

The statute under which we are working is something of a compromise between the electrical interests and the telephone interests

in the state, and leaves much to be desired in the way of efficiency; but the Commission has assumed a rather large discretion, and has adopted certain standards for construction; but we are still laboring under difficulties in the way of knowing just what standards to enforce. As a practical illustration of the method of construction in our state I might say that we have found cases where certain transmission lines have built right through a network of telephone wires, sometimes with their transmission line in contact with telephone wires. We have found all sorts of faulty construction and careless construction, the men constructing the electric current lines apparently being unaware of the dangerous and deadly nature of the forces that they were handling.

Now that being the case, it would seem that some legally constituted authority should take the initiative, and require these men to abide by certain standards which they otherwise will not respect. The question of induction, and the various manifestations of the electric current, seem to be still up in the air, even with the experts, and I feel that a committee of this Association should be continued with authority to devise plans and specifications for adoption by such of the commissions as have authority over transmission lines, to the end that we may get somewhere with this very important matter. I trust that this committee will be continued.

The PRESIDENT. It is a constitutional Committee, and is appointed annually.

Mr. TAYLOR, of Nebraska. Then Mr. President, it will be continued, and if necessary I should like to see it have authority to devise and promulgate such standards as I have suggested.

The PRESIDENT. Are you ready for the motion that the reports be filed and printed?

The motion was unanimously agreed to.

## STATISTICS AND ACCOUNTS OF PUBLIC UTILITY COMPANIES.

The PRESIDENT. The next report is that of the Committee on Statistics and Accounts of Public Utility Companies, of which Mr. Weber, Chief Statistician of the First District of New York, is Chairman.

Mr. Weber read the report of the Committee as follows:

Publicity of accounts is properly required of every enterprise that solicits funds from the investing public through the sale of its capital stock, bonds or other securities, whether rates and service are subject to regulation or not. Even the private, unincorporated stock exchanges now recognize the truth that a corporation offering its shares on the exchanges is obligated to put the general public

of possible buyers of its securities in position to judge of the success of its operations. Public utilities, with minor exceptions, raise the capital required for real estate and construction of facilities through the sale of securities and they must expect to supply adequate information to prospective investors with respect to the results of their operations. The earliest charters to railroad corporations in New York and other states provided for the filing of annual reports and as long ago as 1843 the New York legislature provided for the publication of these reports. In the general railroad law of 1850 the legislature of New York emphasized the importance of such publicity by specifying in detail the contents of the annual reports to be rendered by railroad companies (including street railways), the specified items running into 102 subheadings. This was 36 years before Congress passed the act to regulate commerce.

The early New York reports were criticized by the state official who received them as being inaccurate, misleading and lacking in uniformity. But the legislature did not strengthen his authority to require corrections in reports and it was Massachusetts rather than New York that first developed the accounting and auditing features of railroad reports. In 1876, thirty years before Congress conferred similar powers on the Interstate Commerce Commission, the Massachusetts legislature directed its board of railroad commissioners to "prescribe a system on which the books and accounts of corporations operating railroads or street railways should be kept in a uniform manner" and to examine the books and accounts of such corporations to see that they were kept on the plan prescribed. A few years later Massachusetts established a commission of gas and electricity and endowed it with similar powers to supervise statistics and accounts, under which the Commission adopted a form of annual report and a classification of accounts for gas companies in 1885 and for electric companies in 1887, the year in which the Interstate Commerce Commission came into being. In 1905, one year before Congress strengthened the accounting section of the act to regulate commerce, New York established a commission of gas and electricity with adequate supervisory powers over accounts.

Following the action of New York and Wisconsin in 1907 in establishing public service commissions of the "strong" type, a large majority of the states have provided administrative departments for the supervision of public utilities. These commissions are in the usual case endowed with inquisitorial powers and can therefore obtain from a utility company any information deemed necessary, but in respect of the annual report they are placed by statute in the position of agent of the public rather than principal. The statute usually makes mandatory rather than directory the requirement as to filing annual reports, which become public records and which the Commission must publish (in full or in the form of abstracts) in its own reports to the legislature. Many of the statutes specify the contents of the report, although the tendency

now is to describe the contents in general terms and leave the details to the commissions.

The extent to which the movement for state control over the several classes of public utilities has progressed with respect to the publicity of accounts is indicated in Table I of the Appendix. A more advantageous approach to the same result might perhaps be made by means of a list of the states that have *not* as yet provided for detailed statistical reports. Such a list appears below:

STATES THAT HAVE NOT PROVIDED FOR PUBLICITY OF ACCOUNTS OF  
PUBLIC UTILITIES (OTHER THAN STEAM RAILROADS)

Water Supply	Gas and Street Railways	Electricity Supply	Telephones
NORTHEASTERN STATES			
Vermont			
Rhode Island	Rhode Island		Rhode Island
Delaware*	Delaware*	Delaware*	Delaware*
SOUTHERN STATES			
Virginia	Virginia		Virginia
South Carolina	South Carolina	**	
Florida	Florida	Florida	
Georgia			
Kentucky	Kentucky	Kentucky	
Tennessee	Tennessee	Tennessee	Tennessee
Alabama	Alabama	**	
Mississippi	Mississippi	Mississippi	
Louisiana	Louisiana	Louisiana	
Arkansas	Arkansas	Arkansas	Arkansas
Texas	Texas	Texas	Texas
WESTERN STATES			
Michigan	(Michigan)***	**	
Minnesota	Minnesota	**	
Iowa	Iowa	**	Iowa
North Dakota	North Dakota	North Dakota	
South Dakota	South Dakota	South Dakota	
New Mexico	New Mexico		
Utah	Utah	Utah	Utah
21	18	11	8

\*The principal city of Delaware (Wilmington) has a board of public utility commissioners.

\*\*Jurisdiction is apparently restricted to interurban companies.

\*\*\*Supervises electric but not gas companies.

While complete information is lacking as to the present status of certain of the states which failed to reply to the Committee's questionnaire, it is believed that the summary is substantially correct. It appears that there are now only 8 states which have not provided for publicity of accounts of telephone companies, 11 of street railway companies, 18 of electric companies, 19 of gas companies and 21 or 22 of water companies, according as New York is included or excluded.\*

The most noteworthy fact brought out by the tabulation is that nearly all of the states listed are essentially agricultural states with relatively small urban populations. Of all the states north of the Ohio river only three (Vermont, Rhode Island and Michigan) appear in any of the lists; all three have jurisdiction over electric railways. Delaware has no state commission, but its principal city, Wilmington, has a board of public utility commissioners. There are 11 Southern states in the lists and 7 Western states.

To indicate somewhat more clearly the degree of supervision of accounts now provided in the most important fields of investment, Table III of the Appendix has been prepared, which classifies the states according to the annual output of electricity. The table may be summarized as follows:

Group	Number of states*	Kilowatt hour output
I. States in which accounting classifications have been prescribed	22	8,678,894,179
II. Additional states in which commissions may require reports	9	1,578,492,930
III. States that do not require detailed reports	16	1,185,528,920
IV. States without regulatory commissions	2	90,046,977
Total	49	11,532,963,006

\*Including District of Columbia.

While there are 18 states that have not as yet made provision for publicity of accounts of electrical utilities, these states produce not much over one-tenth of the country's output, the other nine-tenths of the industry being now subject to supervision in a greater or less degree. Among the first 10 or 12 leading states, South Carolina is the only one that has not provided for supervision.

Most of the states that require reports of utilities also provide for supervision of accounting practices, as experience long ago demonstrated that even the most detailed reports might fail to reveal the facts as to the conduct of a business. Unfavorable disclosures might be prevented by ignorance or dishonesty in bookkeeping.

\*Water companies are not included in the public service commissions law, but those outside New York City are in certain respects subject to the jurisdiction of a State Conservation Commission.



Hence the need of detailed regulations to govern accounting practices and procedure and of examiners or auditors to observe the enforcement of such regulations. It was not until 1906 that Congress conferred upon the Interstate Commerce Commission authority to prescribe for common carriers the form and method of keeping accounts. A year earlier the New York legislature had given this power to the new Commission of Gas and Electricity just as Massachusetts had done 20 years earlier. While not all of the states that require reports have yet adopted regulations governing accounting practices, the movement has spread rapidly since 1908, when New York and Wisconsin adopted uniform systems of accounts for street railways, gas companies and electric companies (water companies also in Wisconsin). These two series of classifications have become the basis of most of the classifications since promulgated in the East and West. In 1911 the New York (Second District) Commission prescribed a telephone classification, which about a year later was adopted without substantial change by the Interstate Commerce Commission. This classification contained many improvements, particularly in the matter of the requirements as to depreciation, clearing and affiliated-company accounts, which have been embodied in the accounting rules adopted by California, Oregon and certain other states. A few states are using the standard classification of the National Electric Light Association, which in most respects agrees with the New York classification but varies in a few important matters like depreciation and rent.

From information freely furnished by the various commissions in response to the Committee's inquiry, Table II has been compiled to show the accounting classifications already prescribed for the principal classes of utility companies. Comparing this tabulation with Table I and with another compilation not here reproduced, the following summary is obtained:

Public Utilities	Reports provided for	Commission authorized to prescribe accounts	Accounting classifications adopted
1. Street railways	38	32 +	26
2. Bus companies	5	5	0
3. Express companies (local)	7	6	0
4. Telephone companies	41	30 +	22
5. Gas companies	30	26	20
6. Electric companies	31	27	22
7. Water companies	27	23	17
8. Heating companies	20	15	4

In explanation of the fact that a few of the Commissions which have authority to supervise accounting practices have not yet adopted regulations, it should be recalled that many commissions

are of recent origin and that the formulation of systems of accounts requires considerable time. Pennsylvania, West Virginia and Kansas report that accounting classifications are now under consideration or in the course of preparation, while Georgia has not yet appropriated funds for the employment of an accountant. Twenty or more states have adopted classifications for street railways, telephones, gas and electric companies and 17 for water companies.

So far as steam companies, or heating and cooling companies are concerned, the information at hand indicates that a beginning has been made in the way of uniform accounting. Indiana, Missouri and Montana have promulgated classifications and the Illinois commission has a classification in course of preparation if not already prescribed.

The newest utility brought under supervision is the bus or stage coach company. At least five state commissions exercise jurisdiction over this service but none apparently has yet prescribed accounting classifications. The form of report devised for street railway companies is readily adapted to the city autobus companies and has given entire satisfaction thus far in New York City, which has one large stage coach corporation. Outside the large cities, bus operations are on a small scale and a very simple form of report is all that is required.

It is now generally recognized that the really important questions raised in the regulation of public utilities can be solved only on the basis of adequate records of the facts. "Intelligent regulations as to rates, services and extensions can be passed only after adequate data have been obtained, data which can be secured only by the sustained work of experts. In these facts lies the business justification for utility commissions."\* The formulation of standards, of definitions and classifications,—in other words the regulation of statistical and accounting procedure is the fundamental duty of a public utility commission. Audit or inspection to assure the observance of the regulations and publication of the reports embodying the facts thus recorded complete the publicity of accounts and achieve the purposes thereof, which may be summarized as follows:

- (1) To prevent discrimination and promote equality of treatment among shippers and customers, and to remove suspicion and causes of misunderstanding between the utility company and the public.
- (2) To promote honesty and individual responsibility and thereby the development of efficiency in operation.
- (3) To secure accurate information concerning maintenance and expose any manipulation of accounts that would understate or overstate profits and mislead investors.

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\*King, Regulation of Municipal Utilities, p. 207.

- (4) To furnish correct and accurate statements of cost as a basis for capitalization and rate regulation. Since regulation must take account of the relative efficiency of companies, there must be a uniform basis upon which the operations of different companies and the character and quality of their managements may be compared.
- (5) To furnish correct and accurate statements of labor costs and earnings of employees as a basis of governmental arbitration in wage disputes.

How thoroughly the idea of publicity of accounts has been worked out in some of the states is indicated in the following statement as to the work of the commission in safeguarding the investor, made in 1912 by Chairman Willcox of the New York (First District or City) Commission:

"The most important reason for the State's concern for the investor in public service securities does not arise so much from any special interest in the investor as such but from the State's duty to protect the consumer\*\*\* It is to the consumer's interest that the market for public service securities should be so good that an undertaking of this kind can be financed on the most favorable terms. This means lower charges to the consumer\*\*\*\*\*"

"The establishment of uniform and scientific accounting systems by public service corporations has long been recognized as necessary for the solution of various public service problems. The Commissions have prescribed in great detail accounting systems for railroad companies, street railroad companies, gas companies, electric companies and telephone companies. The companies are required to file monthly, quarterly and annual reports made up in strict compliance with the rules prescribed in the uniform systems of accounts. This gives *needed publicity of the financial transactions and operations* of the companies. It gives the investor for the first time reliable information in relation to the current affairs of the company and it furnishes the public and the Commission with data needed to judge fairly the public relations of the corporation. A uniform system of accounts insures that the same term will mean the same thing whenever and wherever it appears. It thus becomes possible for the first time to compare the operations and finances of different companies and to compare the operations of the same company through a period of years.

"To facilitate such comparisons, the Commission issues:

- (1) An abstract of the monthly report of each street railway company operating in the City of New York, showing its earnings and expenses and the extent of passenger travel during the month.
- (2) An abstract of the quarterly report of each railway company operating in the city, showing not only revenues, expenses and gross and net profits, but also assets and liabilities.
- (3) The annual report of the Bureau of Statistics and Accounts, showing in complete detail the operating, financial and property statistics of every railroad, street railroad, stage-coach, gas and electric corporation (operating or lessor) in the City of New York, together with analyses and summaries of the statistics for each borough, prepared by expert statisticians and accountants".

### QUESTIONS OF JURISDICTION.

- (1) STREET RAILWAYS.—Approximately 38 of the states now require detailed reports from street or interurban railway companies,

North and South Carolina and Wyoming having been added to the 35 commonwealths listed in the report of the Committee on Statistics and Accounts of Electric Railways to the 1914 convention of the Association. About one-half of the states use the Interstate Commerce Commission's form in consequence of statutory enactments designed to prevent conflicting accounting requirements of interstate carriers reporting to both federal and state authorities. Limitations on the authority of the state body to prescribe accounting classifications in conflict with those already enforced by the Interstate Commerce Commission were naturally sought by the trunk-line railroads and as readily conceded by the state legislatures, but the inclusion of electric railroads in such limitation was a mistake which has been rectified by amendments of the statute in some of the states, as in New York. The electric railway is primarily, and the street railway almost solely, an urban or local transportation facility, even when it crosses a state boundary line. It does not therefore come under the jurisdiction of the federal authorities, as was held by the United States Supreme Court, June 1913, in the well-known case of *Omaha & Council Bluffs Street Railway Company vs. Interstate Commerce Commission*. Street railways for passengers only, as they existed in 1887, were not within the contemplation of Congress in passing the Act to Regulate Commerce, the court decided; such railroads are not subject to its provisions or under the jurisdiction of the Interstate Commerce Commission even though they carry passengers across the state line (230 U. S. 324-329). Moreover, the amendment of June 18, 1910, provides that the Commission shall not establish any through route classification or rate between street electric passenger railways not engaged in \* \* \* \* transporting freight \* \* \* \* and railroads of a different character.

The question of jurisdiction was raised again in 1914 under an order of the Interstate Commerce Commission requiring reports of accidents to be filed by all railroad companies, electric and steam. As a result of the protest of some electric companies at a hearing held in December, 1914, the Commission ruled that street passenger railways were outside the scope of the order, which covered electric railways, other than street passenger railways, participating in the interstate movement of persons or property; such railways should report only accidents resulting from the operation of cars engaged in the transportation of passengers and property in interstate commerce. The opinion of the Commission stated that "the requirement of reports of all accidents occurring on all the lines and in all the operations of carriers such as those whose cases have been here described will result in the accumulation of an enormous mass of data prepared at the expenditure of much time and money by the reporting companies and perhaps in most cases duplicating returns

made to state commissions or other more local regulating bodies, without any commensurate advantage."

In New York City, Chicago and Philadelphia there is undoubtedly more money invested in street passenger railways than in all the electric railways engaged in interstate commerce in the United States, and New York alone is in the midst of a program of rapid transit extensions costing upwards of \$350,000,000. These expenditures are being classified in accordance with the accounting system promulgated by the New York Commission in 1908, six years before the Interstate Commerce Commission adopted a uniform system of accounts for electric railways, and it is hardly to be expected that the New York Commission will revise its accounting regulations for the sake of removing some differences between them and the rules subsequently prescribed by the federal body, which has jurisdiction over one or two of the New York City companies and a small number of interurban companies outside the city. Congress excluded electric railways from the eight-hour law of 1916 and from the bill passed by the House at an earlier session for the supervision of the issue of railroad securities and its intent to leave electric railways subject to state regulation must be recognized. Despite these facts, some of the officials of the Interstate Commerce Commission have advised certain interurban railways in New York that the act of Congress makes it unlawful for them to keep any other accounts than those prescribed by that Commission. If this advice were followed, the New York Commissions would be seriously hampered in the enforcement of their accounting rules for gas and electric light and power companies which also operate railway departments.

(2) **TELEPHONE COMPANIES.**—In this field of accounting there are important differences between the classification used in the East, which includes the Interstate Commerce Commission's, and the Wisconsin classification used in other Western states. In the former, the principal distinction drawn is between maintenance and operation, as in the railroad classifications, while in the latter emphasis is placed on functional grouping as in the gas and electrical accounting schemes. The Wisconsin Commission protests that its determinations of cost of service in fixing telephone rates are made at a disadvantage in consequence of the adoption of the former basis. While some telephone companies are required to render reports on two different bases, this does not appear to be a serious matter except in the case of very small companies, which have represented to the committee that they find the federal reporting requirements onerous.

The Committee desires to raise the question at this time whether certain classes of corporations, especially electric railways, that are only technically or very slightly engaged in interstate commerce, should not be relieved altogether from any supervision by the Federal

authorities. As Chairman Van Santvoord of the New York (2nd Dist.) Commission says, the Interstate Commerce Commission would probably have the power to relieve such corporations from the rendering of annual reports even though they were subject to its regulation by a strict construction of the act to regulate commerce.

#### ACCOUNTING FOR DEPRECIATION.

Notwithstanding wide differences of opinion as to the nature of depreciation and the proper method of recording it in the accounts of public utilities, very great and rapid progress toward clarity of thought on this important subject has been made in the last few years. The Interstate Commerce Commission has led the way in the elaborate provision made for depreciation accounts in the classification of operating expenses of steam railroads, effective July 1, 1914, and has instituted special inquiries to ascertain the experience of carriers in determining the rates of depreciation on the various classes of car equipment. The Commission's requirements of depreciation reserves in the case of electric railways are also definite and absolute, with respect to rolling stock, although not so elaborate as in the case of steam railroads. The system of accounts now in general use by telephone companies under orders of the federal and state commissions also contains strict requirements as to the creation of depreciation reserves by charges to operating expenses, although the determination of rates of depreciation has thus far been left to the companies.

The attitude of the states on this subject is even more positive, for they have not only adopted the requirement as a matter of proper accounting but have in many cases embodied it in the statute itself, as appears in the following summary:

## SUMMARY OF STATES IN WHICH PUBLIC UTILITIES ARE REQUIRED TO MAINTAIN DEPRECIATION RESERVES.

Capital X designates commissions having authority under special legislative enactment concerning depreciation (15 states).

Small x designates commissions exercising authority to prescribe accounts (7 states).

1 designates commissions that do not supervise accounts of local utilities (gas, electric, water, etc.) as distinguished from telephone and electric railway companies which must maintain depreciation reserves under the regulations of the Interstate Commerce Commission (16 states).

State		State	
Alabama	1	Nebraska	x
Arizona	X	Nevada	
Arkansas	1	New Hampshire	X
California	X	New Jersey	X
Colorado	X	New Mexico	1
Connecticut		New York	x
Delaware	(No commission)	North Carolina	
Dist. of Columbia	X	North Dakota	1
Florida	1	Ohio	X
Georgia		Oklahoma	
Idaho	X	Oregon	X
Illinois	X	Pennsylvania	X
Indiana	X	Rhode Island	1
Iowa	1	South Carolina	1
Kansas		South Dakota	1
Kentucky	1	Tennessee	1
Louisiana	1	Texas	1
Maine	x	Utah	(No commission)
Maryland	x	Vermont	
Massachusetts (a)	X	Virginia	1
Michigan	x	Washington	x
Minnesota	1	West Virginia	
Mississippi	1	Wisconsin	X
Missouri	X	Wyoming	
Montana	x		

(a) Legislation in Massachusetts has to do with gas and electric utilities, but the accounting regulations of the Public Service Commission for electric railways and telephone companies recognize depreciation.

It thus appears that in 15 states there are special enactments requiring the utilities to maintain depreciation reserves or conferring authority upon the supervisory body to make such requirement. Seven additional states have exercised such authority as a matter of accounting just as the Interstate Commerce Commission has done, without any other or further authority than to regulate accounting procedure. These 22 states embrace most of those that supervise the purely local utilities like gas, electric and water companies. In 16 other states telephone and electric railway companies are subject to the requirement, either under federal or state regulations, while only 9 states (besides Delaware and Utah, which have no state commissions) have not taken action so far as the Committee

has information, namely, Connecticut, Georgia, Kansas, Nevada, North Carolina, Oklahoma, Vermont, West Virginia and Wyoming. Certain of these states have no authority to regulate accounting practices; others report that accounting classifications are in course of preparation.

In Appendix IV there is presented a digest of the legislation concerning depreciation reserves and of the policies outlined by the several state commissions. In most cases the statutes go beyond the mere requirement of a depreciation account in that they confer power on the commission to fix the rates of depreciation and require the companies to expend the moneys reserved for depreciation under regulations prescribed by the commission.

A review of the action taken by the commissions under these statutes indicates that they are proceeding with caution in establishing rates and regulations as to the use of depreciation funds. In nearly every state orders have been issued only after thorough investigation in individual cases involving the determination of rates or the approval of security issues. Both the straight-line method and the sinking-fund method of computing depreciation are used,—the former in nearly all cases in which reproduction-cost or "value of property" is used as the rate-base and the latter in many cases in which investment is taken as the rate-base.

The stock objection offered by utility companies to depreciation funds is that such funds will not be immediately required to finance replacements and consequently represent an idle and useless accumulation at the expense of the consumer. The objection, however, overlooks the fact that public utilities are constantly expanding and must have new monies for betterments, additions and extensions. If these monies are temporarily advanced out of the depreciation funds, there will be less need of borrowing new capital and thereby augmenting fixed charges. In the long run the consumer will save more in having to pay a return on a smaller investment than he will lose by paying a larger contribution to the depreciation fund. This result is well illustrated in the experience of the City of Toronto with its gas company, which on a small capitalization pays dividends of ten per cent and yet furnishes gas at a lower rate (70 cents) than most American cities situated nearer the coal fields, whence Toronto obtains its principal material for the manufacture of gas.

The method prescribed by the Interstate Commerce Commission and the several state commissions in their accounting rules clearly contemplates the use of depreciation funds in the financing of additions and betterments on any other assets up to the time that they are needed for replacements. This idea is clearly expressed in the statutes, as, for example, in the following provisions of the New Hampshire law:

(b) "Every public utility shall carry a proper and adequate depreciation account whenever the commission shall determine that such depreciation account



can reasonably be required, and shall so order. (c) Every public utility shall conform its depreciation account to such rules, regulations and forms as may be prescribed by the Commission. The depreciation fund may be expended in new construction, extensions or additions to the property of the public utility, or invested, and if invested, the income of the investment shall be added to the depreciation fund. Such fund may be used only for new construction, extensions, or additions to physical property or for renewing, restoring, replacing or substituting depreciated property in order to keep its plant and system in a state of repair and efficiency. (d) No public utility shall declare or pay any dividend except out of net corporate income, and except after setting aside such depreciation reserve if any as it may carry in compliance with the provisions of paragraph (b); *provided, however*, that this paragraph shall not be construed to prevent the payment of dividends in any year out of any undistributed balance of such net corporate income previously accumulated." (Act of 1913, chap. 98, sec. 1 in part.)

In construing this Act, the New Hampshire Commission encourages the investment of the depreciation fund in extensions and betterments until such time as it is needed for replacements. Thus in its decision of December 8, 1915, on the application of the Exeter & Hampton Electric Company for authority to issue bonds, the Commission said:

"The expenditure by a utility of its depreciation fund in extensions or additions to its property is recognized as proper, and has received the sanction of the legislature. \* \* \* It is not to be understood that the depreciation fund is to be permanently invested, but only until such time as it will be needed for the purpose for which it is designed, viz., in replacing worn-out and obsolete portions of the capital property. During this period it should share in the net profits of the business on the same terms with the stockholders, and the income so derived should go to augment the depreciation fund. When the utility wishes to get the depreciation fund out of the plant investment to use it in making replacements, it may ask to capitalize the amount so used not exceeding the amount of the depreciation fund so invested."

The Indiana Law of 1913 also provides that moneys in the depreciation fund may be temporarily invested in betterments and extensions subject to this qualification:

"In no event shall the moneys expended from the fund for new construction, extensions, or additions to the property be credited to or considered a part of the capital account of any public utility and should always be charged against the depreciation fund."

Massachusetts requires municipal gas and electric plants to include in operating expenses an allowance "for depreciation equal to 3 per cent of the cost of the plant exclusive of land and any water power appurtenant thereto *or such smaller or larger amount as the Board of Gas and Electric Light Commissioners may approve.*" So much of the depreciation fund as is not required for replacements may be used for repairs and for additions to property, and the plant is not permitted to create obligations for additions while there is a surplus in the depreciation fund. (Revised Laws, Chap-

ter 34, as amended, 1908. The depreciation rate was reduced in 1906 from 5 to 3 per cent.)

The public interest that requires public supervision of accounting of public utilities necessarily requires public determination of rates of depreciation. Experience has demonstrated the necessity of establishing definite requirements for depreciation accounting. The statements of earnings and expenses of individual companies published by the Commissions may easily mislead legislators, citizens and investors, who have assumed that the allowances for depreciation made and reported by the companies themselves have received the approval of the commission. Some companies have grossly inflated expenses by excessive charges for depreciation; other companies have greatly understated expenses and overstated profits by inadequate charges for depreciation. The commissions are therefore urged to ascertain and prescribe depreciation rates for individual companies as soon as possible and until such individual investigations have been completed to require utilities to make depreciation charges at some minimum rate, which may approximate 3 per cent on the entire fixed capital of gas companies and  $3\frac{1}{2}$  per cent in the case of electric companies. Such a requirement would secure some degree of uniformity in a field where there now exists practices so diverse as to perplex and exasperate the public and investors who study the reports of expenses and costs of gas and electricity submitted by the companies and published by the commissions.

It is highly desirable that the state commissions arrive at some agreement in the matter of accounting for depreciation, which overshadows in importance all other questions in the field of statistics and accounts. The steam railroads which for many years refused to recognize the existence of depreciation now generally acquiesce in the requirements of the Interstate Commerce Commission as to depreciation of cars, at least. The electric railway companies long refused to permit their accountants' committees to discuss depreciation with the commission accounting committees and the gas and electric companies even now take that attitude. It is a question of public policy that must be decided by the Commissions before negotiations are undertaken with representatives of utility companies that are requesting the Association to co-operate in the standardization of accounts.

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In correspondence with the Committee, the chairman of the Missouri commission has suggested that the matter of uniform systems of accounts and forms of annual report be placed in the hands of a committee of statisticians and accountants of the various state commissions. Several other commissions have made similar suggestions. The nucleus of such an organization may be found

in the conference held in Chicago on May 23-24, 1916, at the call of Interstate Commerce Commissioner Meyer, for a meeting to discuss the feasibility of obtaining greater uniformity in publications containing railroad statistics. While the discussion was thus limited to the subject of railroad statistics, the conference favored the view that a permanent organization should be formed of a wider scope and emphasized the need of an association of statisticians and accountants of *public utility* commissions. This Committee approves the idea of such an association and urges the various commissions to co-operate in making the next conference or meeting of the association broadly representative. Outside of large questions of policy, like that of depreciation, the matter of accounts and reports is chiefly technical and greater progress toward uniformity can doubtless be made through meetings of the officials whose entire time and thought are given to this single subject than in any other way.

The California commission suggests the desirability of preparing a form of annual report to be filed by express companies with the various state commissions.

The matter of the proper fiscal or report year for public utilities has been presented to the Commissions this year by the American Railway Accounting Officers' Association, which urges a change from the present report year terminating June 30th to the calendar year terminating December 31st. While the discussion has for the most part been confined to the steam railroads, the electric railway companies in New York City were invited to express their opinion, which was on the whole averse to a change. Recommendations relative to this matter were made by the Committee on Statistics and Accounts last year. (Proceedings 1915, p. 106.)

The thanks of the Committee are due to the state commissions that responded so willingly to the committee's numerous inquiries. With but few exceptions the commissions have furnished to the Committee copies of their report forms, accounting classifications and orders containing important rulings on depreciation.

A. F. WEBER, *Chairman*  
 ARTHUR A. LEWIS  
 JOSEPH B. EASTMAN  
 BEECHER W. WALTERMIRE  
 J. G. WILLIAMS\*  
 HENRY S. LYON  
 M. J. MURPHY\*

*Committee.*

\*Authority to affix signature not received at the time report was printed

APPENDIX.

- I. Table showing jurisdiction of state commissions with respect to reports of public utilities.
- II. Table showing accounting classifications adopted by the state commissions.
- III. Table showing the development of the electrical industry in the various states grouped with respect to publicity of accounts.
- IV. Depreciation: (a) Digest of statutory enactments; (b) Practice of the various commissions.
- V. Depreciation as an element of expense (Memorandum).

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NOTES TO TABLE I.

- (1) The various utilities under jurisdiction of the state commissions fall into two groups, one consisting of railroads and other common carriers primarily of interstate character, and the other consisting of public utilities primarily of local or non-interstate character. The former class usually includes steam railways, express, sleeping-car, private car line, telegraph, telephone, water transportation companies, oil pipe lines, warehouses and elevators, but varies in the different commonwealths.
- (2) Operating in more than one city or town.
- (3) Delaware and Utah have no state commissions. There is a local commission in the City of Wilmington, Delaware.
- (4) Interurban railways only.
- (5) The various laws specify either stage routes, auto stage lines, jitney buses or taxicabs, etc.
- (6) Wharfingers or dock companies.
- (6a) Wharfingers or dock companies, and cotton compress companies.
- (7) Ferries.
- (8) Transmission lines.
- (9) Ferries and toll bridges.
- (10) Sewer companies.
- (11) Messenger and signalling companies.
- (12) Ferries, wharfingers or dock companies, bridges, incline planes, sewage, tunnels, turnpikes.
- (13) "Voluntary associations."
- (14) Only as directed by the Commission on stock and bond matters.

TABLE I. JURISDICTION OF ALL STATE RAILROAD AND PUBLIC SERVICE COMMISSIONS OVER PUBLIC UTILITIES  
WITH RESPECT TO THEIR AUTHORITY TO REQUIRE FILING OF REPORTS.

NOTE: In the absence of definite information from a state commission, entries are based on statutes of the year stated in column I. For further explanations, see preceding page.

STATE	Rail-roads (1)	Street rail-ways	Bus com- panies (5)	Local express	Tele- phone	Gas	Elect- ric	Water	Steam, or heat- ing and cooling	Mis- cell- aneous
Alabama (1912)	x	(4)x	..	..	(2)x	..	..	..	..	..
Arizona	x	x	x	x	x	..	x	x	x	..
Arkansas (1912)	x	..	..	..	..	..	..	..	..	..
California	x	x	..	..	x	x	x	x	..	(6)
Colorado*	x	x	x	..	x	x	x	x	..	..
Connecticut	x	x	..	..	x	x	x	x	..	..
Delaware (3)	..	..	..	..	..	..	..	..	..	..
Dist. of Columbia	x	x	x	x	x	x	x	x	x	..
Florida (1913)	x	..	..	..	x	..	..	..	..	(6a)
Georgia	x	x	..	..	x	x	x	..	..	..
Idaho*	x	x	..	..	x	x	x	x	..	(6)
Illinois (1913)	x	x	..	..	x	x	x	x	x	(6)
Indiana*	x	x	..	x	x	x	x	x	x	(8)
Iowa	x	(4)x	..	..	..	..	..	..	..	..
Kansas	x	(4)x	..	..	x	x	x	x	x	..
Kentucky	x	..	..	..	x	..	..	..	..	..
Louisiana	x	x	..	..	x	x	x	x	..	(6)
Maine*	x	x	..	..	x	x	x	x	..	(7)
Maryland (1913)	x	x	..	..	x	x	x	x	..	(13)
Massachusetts*	x	x	..	..	x	x	x	x	..	..
Michigan	x	(4)x	..	..	x	..	x	..	..	..
Minnesota	x	(4)x	..	..	x	..	..	..	..	..
Mississippi	x	..	..	..	x	..	..	..	..	..
Missouri*	x	x	..	..	x	x	x	x	x	(7)
Montana*	x	x	..	..	x	x	x	x	x	..

Nebraska	x	x	..	..	x	(14)x	(14)x	(14)x	..	..
Nevada (1914)	x	x	..	..	x	x	x	x	x	(9)
New Hampshire	x	x	..	..	x	x	x	x	x	(10)
New Jersey*	x	x	..	..	x	x	x	x	x	..
New Mexico	x	x	..	..	x	..	..	..	..	..
New York*	x	x	x	x	x	x	x	x	x	..
North Carolina (1913)	x	x	..	..	x	x	x	x	x	..
North Dakota (1912)	x	..	..	..	x	..	..	..	..	(11)
Ohio*	x	x	..	..	x	x	x	x	x	..
Oklahoma	x	x	..	..	x	x	x	x	x	..
Oregon	x	x	..	..	x	x	x	x	x	(12)
Pennsylvania*	x	x	x	x	x	x	x	x	x	..
Rhode Island (1912)	x	x	..	..	..	..	..	..	..	..
South Carolina (1912)	x	(4)x	..	..	x	..	..	..	..	..
South Dakota (1913)	x	..	..	..	x	..	..	..	..	..
Tennessee (1913)	x	..	..	..	..	..	..	..	..	..
Texas (1912)	x	..	..	..	..	..	..	..	..	..
Utah (3)	..	..	..	..	..	..	..	..	..	..
Vermont*	x	x	..	..	x	x	x	x	x	..
Virginia	x	x	..	..	..	..	..	..	..	..
Washington*	x	x	..	..	x	x	x	x	x	(8)
West Virginia*	x	x	..	..	x	x	x	x	x	(9)
Wisconsin*	x	x	..	..	x	x	x	x	x	..
Wyoming (1915)*	x	x	..	..	x	x	x	x	x	..
Total	47	38	5	7	41	30	31	27	20	..

\*Commission has authority over municipally owned and operated public utilities with regard to requiring the filing of annual reports.

TABLE II. ACCOUNTING CLASSIFICATIONS ADOPTED BY PUBLIC UTILITY COMMISSIONS.

Entries against such names of states as are followed by the letters N. A. ("not answered") have been derived from other sources of information than advices from the commission concerned. Five states (Arkansas, Delaware, Tennessee, Texas, Utah) without jurisdiction are omitted.

STATE	Street railways	Telephone	Gas	Electric	Water	Steam or heating and cooling
Alabama (N. A.)	.....	.....	..	..	..	..
Arizona	I. C. C.	I. C. C.	x	x	x	..
California	.....	I. C. C.	x	x	x	..
Colorado	I. C. C.	I. C. C.	x	x	x	..
Connecticut	I. C. C.	.....	(2)	(2)	(3)	..
Dist. of Columbia	I. C. C.	I. C. C.	x	x	..	..
Florida (N. A.)	.....	.....	..	..	..	..
Georgia	x	.....	..	..	..	..
Idaho	I. C. C.	I. C. C.	(3)	x	x	..
Illinois (N. A.)	I. C. C.	x	(4)x	(4)x	(4)x	(4)x
Indiana	x	x	x	x	x	x
Iowa	.....	.....	..	..	..	..
Kansas	.....	x	..	..	..	..
Kentucky	.....	.....	..	..	..	..
Louisiana	.....	.....	..	..	..	..
Maine	I. C. C.	(1)x	x	x	x	..
Maryland (N. A.)	x	x	x	x	x	..
Massachusetts	I. C. C.	I. C. C.	x	x	x	..
Michigan	I. C. C.	I. C. C.	..	x	..	..
Minnesota	I. C. C.	I. C. C.	..	..	..	..
Mississippi (N. A.)	.....	.....	..	..	..	..
Missouri	I. C. C.	I. C. C.	x	x	x	x
Montana	x	x	x	x	x	x
Nebraska	x	x	..	..	..	..
Nevada (N. A.)	I. C. C.	.....	x	x	x	..

[illegible]

- (1) For Class D corporations.
- (2) Fixed capital accounts only; commission without specific authority to prescribe complete system.
- (3) Tentatively adopted the Wisconsin classification; only three gas companies in the state.
- (4) Classifications have been prepared; date of adoption not reported.
- (5) No accounting classifications prescribed other than that required by report blank forms.
- (6) "None yet adopted. In process of construction."



TABLE III: SHOWING DEVELOPMENT OF THE ELECTRIC LIGHT &amp; POWER INDUSTRY AS INDICATED BY THE KW. HOUR OUTPUT (1912 CENSUS) IN THE VARIOUS STATES GROUPED WITH RESPECT TO PUBLICITY OF ACCOUNTS.

Division and State	GROUP I. States in which accounting regulations have been prescribed (a)	GROUP II. States in which Commissions have authority to prescribe accounts or to require reports (b)	GROUP III. States which do not require detailed reports.	GROUP IV. States without regulatory commissions.
<b>NORTHERN:</b>				
Maine	117,092,565	.....	.....	.....
New Hampshire	126,593,970	.....	.....	.....
Vermont	.....	56,552,977	.....	.....
Massachusetts	386,254,294	.....	.....	.....
Rhode Island	.....	.....	62,106,528	.....
Connecticut	.....	130,672,201	.....	.....
New York	2,175,048,634	.....	.....	.....
New Jersey	383,891,504	.....	.....	.....
Pennsylvania	.....	989,665,167	.....	.....
Delaware	.....	.....	.....	3,412,319
Maryland	23,629,117	.....	.....	.....
Dist. of Columbia	40,953,449	.....	.....	.....
Ohio	399,101,309	.....	.....	.....
Indiana	236,644,000	.....	.....	.....
Illinois	1,150,800,306	.....	.....	.....
Michigan	526,912,303	.....	.....	.....
Wisconsin	216,402,974	.....	.....	.....
<b>SOUTHERN:</b>				
Virginia	.....	.....	28,724,684	.....
West Virginia	.....	42,344,796	.....	.....
North Carolina	.....	70,552,737	.....	.....
South Carolina	.....	.....	356,771,757	.....
Georgia	.....	87,571,815	.....	.....
Florida	.....	.....	25,395,751	.....
Kentucky	.....	.....	75,593,179	.....
Tennessee	.....	.....	75,544,823	.....
Alabama	.....	.....	48,602,553	.....
Mississippi	.....	.....	27,324,183	.....
Arkansas	.....	.....	17,786,660	.....
Louisiana	.....	.....	18,328,080	.....
Oklahoma	48,324,097	.....	.....	.....
Texas	.....	.....	149,008,819	.....

WEST NORTH CENTRAL:

Minnesota	.....	.....	186,045,055	.....
Iowa	.....	.....	67,166,847	.....
Missouri	.....	.....	.....	.....
North Dakota	232,828,763	.....	12,298,553	.....
South Dakota	.....	.....	24,708,754	.....
Nebraska	.....	.....	.....	.....
Kansas	.....	.....	56,299,882	.....
PACIFIC:	.....	133,252,988	.....	.....
Montana	379,212,617	.....	.....	.....
Idaho	115,812,252	.....	.....	.....
Wyoming	.....	11,580,567	.....	.....
Colorado	165,196,068	.....	9,027,324	.....
New Mexico	.....	.....	.....	.....
Arizona	33,960,084	.....	.....	86,634,658
Utah	.....	.....	.....	.....
Nevada	44,969,772	.....	.....	.....
Washington	71,414,473	.....	.....	.....
Oregon	58,789,343	.....	.....	.....
California	1,747,459,041	.....	.....	.....
Total	8,678,894,179	1,578,492,930	1,185,528,920	90,046,977

- (a) All of these states except Michigan also have jurisdiction over gas utilities.  
 (b) Three states (Connecticut, Nebraska and Wyoming) appear to have no specific authority to prescribe accounts.

## IV. DEPRECIATION ACCOUNTS.

## (a) DIGEST OF STATUTORY ENACTMENTS.

ARIZONA—Substantially identical with California statute.

CALIFORNIA—"Sec. 49. The Commission shall have power, after hearing, to require any or all public utilities to carry a proper and adequate depreciation account in accordance with such rules, regulations and forms of account as the Commission may prescribe. The Commission may, from time to time, ascertain and determine and by order fix the proper and adequate rates of depreciation of the several classes of property of each public utility. Each public utility shall conform its depreciation accounts to the rates so ascertained, determined and fixed, and shall set aside the moneys so provided for out of earnings and carry the same in a depreciation fund and expend such fund only for such purposes and under such rules and regulations both as to original expenditure and subsequent replacement as the Commission may prescribe. The income from investment of moneys in such fund shall likewise be carried in such fund."

COLORADO—Identical with California.

DISTRICT OF COLUMBIA—"Par. 16. That every public utility shall carry a proper and adequate depreciation account. The commission shall ascertain and determine what are the proper and adequate rates of depreciation of the several classes of property of each public utility. These rates shall be such as will provide the amounts required over and above the expense of maintenance to keep such property in a state of efficiency corresponding to the progress of the industry. Each public utility shall conform its depreciation accounts to such rates so ascertained and determined by the Commission. The Commission may make changes in such rates of depreciation from time to time as it may find to be necessary \* \* \*"

IDAHO—"Sec. 47. The Commission shall have power, after hearing, to require any or all public utilities, except such as are subject to the Act of Congress entitled 'An Act to Regulate Commerce,' approved February 4th, 1887, and the acts amendatory thereof and supplementary thereto, to carry a proper and adequate depreciation account in accordance with such rules, regulations and forms of accounts as the Commission may prescribe." Other provisions are identical with California.

ILLINOIS—"Sec. 14. Depreciation Accounts. The Commission shall have power, after hearing, to require any or all public utilities to keep such accounts as will adequately reflect depreciation, obsolescence and the progress of the arts. The Commission may, from time to time, ascertain and determine and by order fix the proper and adequate rate of depreciation of the several classes of property for each public utility; and each public utility shall conform its depreciation accounts to the rates so ascertained, determined and fixed."

INDIANA—Identical with Wisconsin except that it applies to all utilities and contains this addition: "But in no event shall the moneys expended from the fund for new construction, extensions or additions to the property, be credited to or considered a part of the capital account of any public utility, but shall always be charged against the depreciation fund."

MASSACHUSETTS—From General Laws Relating to Manufacture and Sale of Gas and Electricity: "Section 40. If where the board approves an issue

of new stock or bonds by a gas or electric company, it determines that the fair structural value of the plant and of the land of such company is less than its outstanding stock and debt, it may prescribe such conditions and requirements as it determines are best adapted to make good within a reasonable time the impairment of the capital stock; or before allowing an increase, it may require the capital stock to be reduced by a prescribed amount, not exceeding the amount of such impairment \* \* \* Idem. Section 114. "Prior to each fiscal year the manager of municipal lighting shall furnish \* \* \* an estimate of \* \* \* an amount for depreciation equal to three per cent of the cost of the plant exclusive of land and any water power appurtenant thereto or such smaller or larger amount as the board of gas and electric light commissioners may approve."

MISSOURI—Identical with California except that the provision is stated three times, each for a different class of utilities.

NEW HAMPSHIRE—" (b) Every public utility shall carry a proper and adequate depreciation account whenever the commission shall determine that such depreciation account can reasonably be required, and shall so order. (c) Every public utility shall conform its depreciation account to such rules, regulations and forms as may be prescribed by the commission. The depreciation fund may be expended in new construction, extensions or additions to the property of the public utility, or invested, and if invested, the income of the investment shall be added to the depreciation fund. Such fund may be used only for new construction, extensions, or additions to physical property or for renewing, restoring, replacing or substituting depreciated property in order to keep its plant and system in a state of repair and efficiency. (d) No public utility shall declare or pay any dividend except out of net corporate income, and except after setting aside such depreciation reserve if any as it may carry in compliance with the provisions of paragraph (b); *provided, however*, that this paragraph shall not be construed to prevent the payment of dividends in any year out of any undistributed balance of such net corporate income previously accumulated." (Chap. 98, laws of 1913.)

NEW JERSEY—"Sec. 17. The board shall have power, after hearing, upon notice by order in writing to require every public utility as herein defined: (f) To carry, whenever in the judgment of the board it may reasonably be required, for the protection of stockholders, bondholders or creditors a proper and adequate depreciation account in accordance with such rules, regulations and forms of account as the board may prescribe. The board shall from time to time ascertain and determine, and by order in writing after hearing, fix proper and adequate rates of depreciation of the property of each public utility, in accordance with such regulations or classifications, which rates shall be sufficient to provide the amounts required over and above the expense of maintenance to keep such property in a state of efficiency corresponding to the progress of the industry. Each public utility shall conform its depreciation accounts to the rates so ascertained, determined and fixed, and shall set aside the moneys so provided for out of earnings and carry the same in a depreciation fund. The income from investments of moneys in such fund shall likewise be carried in such fund. This fund shall not be extended [sic] otherwise than for depreciation, improvements, new constructions, extensions or additions to the property of such public utility."

OHIO—Sections 614-49. "Every public utility shall carry a proper and adequate depreciation or deferred maintenance account whenever the Commission after investigation shall determine that a depreciation account can be reasonably required," etc.

OREGON—Identical with Wisconsin, except that it includes all utilities.

PENNSYLVANIA—"Article II, Section 1. It shall be the duty of every public service company (i) \* \* \* to carry a proper and reasonable depreciation account, if required so to do by order of the Commission \* \* \*."

WISCONSIN—"The Public Utility Law of this state requires all utilities (telephone, gas, electric, water, steam) to set aside depreciation reserves at the direction of the Commission." Laws 1907, Ch. 399, sec. 1797m-15 as follows:

"1. Every public utility shall carry a proper and adequate depreciation account whenever the commission after investigation shall determine that such depreciation account can be reasonably required. The commission shall ascertain and determine what are the proper and adequate rates of depreciation of the several classes of property of each public utility. The rates shall be such as will provide the amounts required over and above the expense of maintenance, to keep such property in a state of efficiency corresponding to the progress of the industry. Each public utility shall conform its depreciation accounts to such rates so ascertained and determined by the commission. The commission may make changes in such rates of depreciation from time to time as it may find to be necessary.

2. The commission shall also prescribe rules, regulations, and forms of accounts regarding such depreciation which the public utility is required to carry into effect.

3. The commission shall provide for such depreciation in fixing the rates, tolls and charges to be paid by the public.

4. All moneys thus provided for shall be set aside out of the earnings and carried in a depreciation fund. The moneys in this fund may be expended in new constructions, extensions or additions to the property of such public utility, or invested, and if invested, the income from the investments shall also be carried in the depreciation fund. This fund and the proceeds thereof shall be used for no other purpose than as provided in this section and for depreciation."

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(b) SUMMARY OF STATE COMMISSION PRACTICE RESPECTING DEPRECIATION.

ARIZONA—Under the accounting classifications, the companies are required to set aside depreciation reserves. There is no specific requirement as to the investment of such reserves. The Commission uses the straight-line method in providing for depreciation requirements and in general has deducted accrued depreciation in arriving at fair value. For each rate case, rates of depreciation have been established—for water companies these have been from 3 to 4 per cent. and for electrical and gas companies from 4 to 5 per cent.

CALIFORNIA—Section 49 of the Public Utilities Act gives the Railroad Commission power, after hearing, to fix by order adequate rates of depreciation of the several classes of property of each public utility. Each public utility shall conform its depreciation accounts to the rates so determined and fixed and shall set aside the moneys so provided for out of earnings and carry the same in a depreciation fund and expend such fund only for such purposes and under such rules and regulations as the Commission may prescribe.

The classification of accounts requires the setting aside of depreciation reserves, the amount to be determined by the corporation. A number of

orders have been made in individual cases compelling public utilities to set aside depreciation reserves.

The Commission has as yet made no order on the manner in which depreciation reserves shall be invested.

In rate cases if estimated reproduction cost-new less depreciation is the basis, straight-line depreciation is computed; if investment or historical reproduction cost or reproduction cost new is used, depreciation is computed by the sinking fund method.

The Commission is unable to state a uniform rule as to the deductibility of accrued depreciation for rate purposes. It says in part \* \* \* "we take the reproduction cost either historical or new less accrued depreciation if it appears that the depreciation reserve has been reinvested in the property."

**COLORADO**—Section 34 of the Public Utilities Act is identical with the California statute quoted above. The classification of accounts provides for depreciation reserves, the amount to be determined by the companies on the basis of their experience, although in individual cases depreciation rates have been established by the Commission. No general requirement exists as to whether sinking fund or straight-line method should be employed, but it is the intention of the Commission at some future date to make definite provision for the basis of computation, etc. It has been the rule for rate purposes to take the reproduction value less depreciation.

**DISTRICT OF COLUMBIA**—The Interstate Commerce Commission accounting classifications are used. Every public utility is required by the law to carry a proper and adequate depreciation account and the Commission is clothed with authority to direct the investment of the fund and to determine what are proper and adequate rates of depreciation for each public utility. The companies are required to conform their accounts to the rate so determined by the Commission. In prescribing a rate of charge to operating expenses the Commission has used the straight-line method. The law provides that interest on the funds invested shall be added to the fund. In arriving at fair value accrued depreciation is deducted. Rates of depreciation have been ordered as follows: Way and structure of street railways 3.34 per cent and 2.86 per cent.; equipment 3.87 per cent; power plant equipment 4.25 per cent; motor cabs (taxicab companies) 21.5 per cent, 15.7 per cent and 19.7 per cent.

**GEORGIA**—The Commission has power to prescribe accounting methods and forms, but has never undertaken to do so as it has lacked the necessary appropriation.

**IDAHO**—No rates of depreciation for any class of public utilities have been established, nor has the Commission prescribed the manner in which depreciation reserves should be invested. In rate cases, the amount of the annual accrual of depreciation has been determined for the companies affected. The straight-line method of computing depreciation has been followed in all cases; in arriving at fair value, the Commission has invariably made no deduction on account of accrued depreciation.

**INDIANA**—The act of 1913 requires public utilities to set aside depreciation reserves when required by the Commission, which has exercised such authority in numerous cases. Accrued depreciation is deducted in arriving at "fair value."

**IOWA**—The Commission has jurisdiction with respect to the accounts of interurban electric railways, common carriers and telephone companies in so far as they cross steam railroads. It has not required specific de-

preciation reserves and has made no requirement as to investment of depreciation reserves. If determination were to be made of fair value, accrued depreciation would be deducted. The Commission does not approve of investing the depreciation fund in extensions or additions.

**KANSAS**—The only accounting classification prescribed by the Commission is that for telephone companies. A classification for electric companies is under consideration. The Commission does not prescribe the manner in which depreciation reserves shall be invested nor has it established rates of depreciation for utilities by order or otherwise. In arriving at fair value, the Commission has ascertained the cost of reproduction and the depreciation that has actually taken place; it also gives consideration to actual investment when ascertainable.

**MAINE**—The accounting classification requires a reserve for depreciation but under the law no specific fund is necessary. The Commission has recommended informally that the reserve be invested in additions to or replacements of plant. Straight-line method of computing depreciation has been employed with modification in accordance with results of physical inspection. The accrued depreciation so determined is deducted to arrive at fair value.

**MASSACHUSETTS**—The Public Service Commission has prescribed accounting classifications which require the setting up of certain depreciation reserves in the cases of railroad, street railway, telephone, telegraph, express and steamship companies. These classifications are the same as those prescribed by the Interstate Commerce Commission and the provisions with respect to the setting up of depreciation reserves are identical. The manner of investing depreciation reserves is not regulated nor has a method of computation been prescribed. In fixing rates the Commission allows a reasonable return upon capital honestly and prudently invested. This means the contributions of stockholders and creditors and does not include appropriations from income. Normally, the investment is represented by the outstanding capitalization, owing to the fact that stock and bond issues have been supervised in Massachusetts for so long a time. The treatment of accrued depreciation is governed by the equities of each particular case, but the Commission has held that it should not be deducted from the investment where the failure to make adequate provision for depreciation has not been due to the payment of excessive dividends or other forms of mismanagement. No specific rates of depreciation have been prescribed for the various companies.

The Commission for Gas and Electricity has laid down no definite rule with respect to depreciation, but requires full information as to the provision made therefor, and has power to require a utility to make good any impairment in the structural value of its property, even to the extent of ordering a reduction in the capital stock. Under depreciation, apparently, the Commission does not include obsolescence and inadequacy and therefore it encourages companies to lay aside (in addition to depreciation) a surplus sufficient to enable the plant to meet such contingencies. Accrued depreciation is taken into account in determining a reasonable return in rate cases, but reproductive value, however determined, is not controlling and is given such weight as the equities demand.

**MICHIGAN**—The Commission has control of the accounts of electric light and power companies; also railways, telephone companies, etc., but as to these companies it has adopted the I. C. C. classifications. No fixed rule has been established requiring the setting aside of depreciation reserves or regulating the manner of their investment. The depreciation requirement of the Commission's accounting classification for electric companies does not prescribe a method, but it is contemplated that the straight-line method

will be followed. Upon appraisal of property the Commission has deducted accrued depreciation in arriving at fair value, but is not committed to doing so, if value were determined upon the basis of record costs. No depreciation rates have been established for public utilities by order or otherwise.

**MINNESOTA**—Commission has power to require corporations to set aside such depreciation reserves as, in its opinion, may seem proper. Only one telephone appraisal has been made and in that case depreciation was deducted from estimated original cost in arriving at value.

**MISSOURI**—Accounting classifications for electric, gas, water and heating corporations provide for depreciation reserves covering accrued wear and tear, obsolescence and inadequacy and expired intangible capital. They do not prescribe the method of computation or the manner in which the fund shall be invested. "The Commission has not been in existence a sufficient length of time to compile statistical data on which to base fixed rates of depreciation."

**MONTANA**—The accounting classification requires a depreciation reserve. No fixed rate of depreciation has been prescribed for public utilities nor does the Commission prescribe the manner in which the depreciation reserve shall be invested. The sinking fund or straight-line method of providing for depreciation is at the option of the company. "It is not the policy of the Commission to deduct accruing depreciation in placing a fair value on the property when the service given is or approaches 100 per cent efficiency."

**NEBRASKA**—The Commission has in numerous orders authorizing the issue of securities, required companies to set up a specific amount for depreciation although no companies are required by law to set aside depreciation. In the case of telephone companies the Commission regards 8 per cent on capital outlay as a minimum allowance for both repairs and depreciation, and in some cases has allowed 9 per cent. (1914 Annual Report, p. 295). The orders have required that the depreciation reserves should be held in liquid assets or in additions and betterments to the property, with the approval of the Commission. Where reproduction value is the controlling factor in arriving at "fair value," present value is adopted, which has the effect of deducting accrued depreciation. Where companies invest their maintenance reserve in betterments and additions, the Commission allows the same rate of return on moneys so invested as on the principal invested in the property; where the reserve is held in liquid assets no interest charge is required.

**NEW HAMPSHIRE**—All public utilities in the state are required by law to set aside depreciation reserves whenever required to do so by the Commission, the Commission does not prescribe the manner in which such reserves shall be invested nor has it established rates of depreciation for public utilities. Accrued depreciation is deducted in arriving at fair value in valuation cases.

**NEW JERSEY**—The public Utility Act empowers the Board to require all utilities to "carry a proper and adequate depreciation account in accordance with such rules, regulations and forms of account as the Board may prescribe." The amount is left to the judgment of the companies except where it appears to be grossly inadequate. The Act provides that a depreciation fund, which may be set aside in accordance with the rules adopted by the Board shall not be "expended otherwise than for depreciation, improvements, net construction, extensions and additions." The



straight-line method of calculating depreciation is invariably used and in almost every case accrued depreciation has been deducted in arriving at fair value. Annual depreciation rates on appraised structural value have been determined as follows:

Gas companies—2.92%, 2.05%, 2.25%, 2.10%

Electric companies—3.66%, 3.78%, 3.73%, 3.68%, 2.76%.

Hydro-electric—1.88%.

Water companies, eight cases varying from 1.14% to 1.75%.

**NEW MEXICO**—The Commission has jurisdiction over street railway, telegraph and telephone companies (and steam railroads) and uses the Interstate Commerce Commission forms.

**NEW YORK**—All of the accounting classifications adopted by the two commissions of New York prescribe charges to operating expenses to meet the accrual of depreciation. The First District (New York City) Commission has in several cases (notably the Metropolitan and Third Avenue railway cases) ordered definite amounts set aside for maintenance (repairs and depreciation). Under the greater New York charter franchises are granted to street railway companies with provision that property in the streets shall revert to the city without cost on the expiration of the grant, and the Commission requires that capital thus expended shall be amortized. As the term is certain, the annual charge is computed by the sinking fund method on a  $4\frac{1}{2}$  or 5 per cent basis. In rate cases and reorganization cases, accrued depreciation computed according to the straight-line method is deducted from reproduction cost new. In its valuation work, the Commission has with steadily increasing success endeavored to apply actual cost prices to the inventory of existing property. Both commissions, however, give consideration to actual investment as well as reproduction cost and have attempted to decide each case on its merits.

**OHIO**—The law provides that the Commission shall ascertain, determine and prescribe what are proper and adequate charges for depreciation of the several classes of property for each public utility. The moneys thus provided shall be set aside in a depreciation fund to be expended only for new construction or invested. It may be used only for these purposes or for renewals except upon the approval of the Commission. In ascertaining the value of various kinds and classes of property, the Public Utilities Act (see 499-9) gives the Commission authority to ascertain depreciation existing, if any, from the new reproductive cost. The law states that the net value is derived by deducting depreciation from reproductive cost new.

**OKLAHOMA**—In valuation cases the Commission applies the straight-line method of calculating accrued depreciation, which is deducted from "cost-new." It has made no special requirements concerning the investment of depreciation reserves accumulated pursuant to accounting classifications.

**OREGON**—The Public Utility Law requires that "every public utility shall carry a proper and adequate depreciation account whenever the Commission after investigation shall determine that such depreciation account can reasonably be required." The law provides that the moneys thus provided shall be set aside in a depreciation fund, to be expended only for new construction, additions, etc., or invested or used to make good depreciation. Neither the sinking fund nor straight-line method can be absolutely adopted by this Commission. Accrued depreciation is deducted in arriving at a determination of fair value. No definite rates of depreciation have been established because of diversified conditions. Depreciation reserves have been prescribed in rate cases, but for other companies the Commission has pointed out the advisability of establishing depreciation reserves.

**PENNSYLVANIA**—No systems of accounts have as yet been prescribed but the matter is under consideration. All utilities are required by law to set aside reserves for depreciation if ordered by the Commission to do so; also the Commission may relieve any company from the necessity of carrying a depreciation reserve. Neither of these powers has thus far been used. Accrued depreciation has been deducted in arriving at fair value.

**VERMONT**—No classifications of accounts have yet been adopted although the Commission has supervision of accounting procedure. No statutory requirements as to depreciation and none have been made by the order of the Commission.

**VIRGINIA**—The State Corporation Commission has not prescribed accounting classifications for railroads (steam and electric), the I. C. C. forms of report being in use. The Commission has made no orders with reference to depreciation in its relation to capitalization or rates.

**WASHINGTON**—The accounting classification requires the companies to credit replacement reserve with an amount which is transferred from surplus, and represents the amount to be set aside annually for future replacements of a large or extraordinary character due to gradual deterioration or obsolescence. The amount is determined by the company, no requirement being made as to the manner in which it shall be invested; rates of depreciation have not been prescribed. The Commission uses the straight-line and sinking-fund methods of depreciation, but prefers the latter. It does not as a rule deduct accrued depreciation in arriving at fair value. "The statute provides that to insure adequate and sufficient service, renewals and replacements and even additions and betterments may be ordered but only the latter might be capitalized, hence we see no occasion for using the so-called depreciated value."

**WEST VIRGINIA**—Accounting classifications have not yet been adopted, although in process of construction. Does not prescribe manner in which depreciation fund shall be invested. Deducts accrued depreciation in valuation cases.

**WISCONSIN**—The Public Utility Law requires all utilities to set aside depreciation reserves at the direction of the Commission. The law provides that the moneys thus provided shall be set aside in a depreciation fund, to be expended only for new construction, additions, etc., or invested or used to make good depreciation. The Commission has used sinking-fund and straight-line method of depreciation, but the one generally used has been approximately a 2 per cent sinking-fund basis. Generally the Commission's determinations have given fair value as not far from cost new; it has taken cost new less depreciation, added working capital and intangibles and any reserve actually on hand for depreciation. Rates of depreciation have not been prescribed.

#### **V. DEPRECIATION AS AN ELEMENT OF EXPENSE.**

(PORTION OF A MEMORANDUM PREPARED FOR THE NEW YORK  
PUBLIC SERVICE COMMISSION FOR THE FIRST DISTRICT  
BY A. F. WEBER, CHIEF STATISTICIAN)

Depreciation is defined in general as "the falling of value or reduction of worth" (Webster); or more specifically, as the decrease in value of perishable property due to age, use and other causes.

The author of a leading treatise (*Depreciation and Wasting Assets*, by P. D. Leake, an English accountant) says that—

"In its true commercial sense, the word depreciation means fall in exchangeable value of wasting assets, computed on the basis of cost expired during the period of their use in seeking profits, increase or other advantage."

The alternative term suggested by Leake, "expired capital outlay," is superior in its exactness, but cannot, perhaps, be expected to supersede a word so well established in common usage as depreciation. Everybody old enough to recognize the difference between the value of a new article and a second-hand article of the same kind understands the meaning of depreciation. While in recent years an attempt has been made to becloud the idea of depreciation with the argument that an instrument of production which is today giving satisfactory service, even if its normal life is nearly run, is just as valuable as a similar instrument of production which has just entered upon its life in service, this argument is seldom taken seriously. With what lack of seriousness it is advanced is well illustrated in a recent capitalization case before the Commission. The owners of the Metropolitan Street Railway, in asking the Commission to approve an issue of securities pursuant to a plan of reorganization, maintained that cars in active service were worth their original cost irrespective of their age; but a few weeks later, having decided to replace a certain type of car with the new "stepless" car, they took the position that the old car which for reorganization purposes had been worth its original cost of \$3,700 was really worth only \$600. They proposed to augment their fixed charges by issuing new securities for the entire cost of the new cars in excess of this \$600 per car, thus including the \$3,100 necessary to maintain the existing investment and capitalization! What at first had been "theoretical" depreciation in the argument of their counsel almost over night became actual depreciation. At the present time it hardly needs to be said that engineers and economists are with very few exceptions agreed that the so-called "theoretical" depreciation is absolute depreciation, and that the accrual of depreciation from month to month should be recognized in the expense accounts as explicitly as the accrual of a tax payable at some future date.

## II.

The nature of depreciation appears more clearly upon examination of the distinction between "capital" and "expense". Although this is the fundamental distinction made in modern accounting of capitalistic undertakings, it is a distinction based entirely upon the period of time embraced within the accounting period. The usual accounting period is a year and the year has been officially recognized in most of the legislation that gives public boards sup-

ervation. This purely arbitrary standard of time has been adopted in the uniform system of accounts and endorsed by the companies' committee. It is conceivable, however, that an enterprise using automobiles as a principal instrument of production might fix upon five or six years as its accounting period during which the automobiles would be worn out and would therefore be entered directly in the expense account.

In the words of a recent writer in the American Economic Review (March, 1914, page 206)—

"All outlays are capital outlays for a manufacturing concern unless they are considered with reference to a period of time. The supplies of coal used in the production of gas represent a capital investment for the gas company, but if a report for one year be constructed all of the coal which has been used in the production of gas sold to the consumers, becomes an expense to the amount of its original cost. It was a part of the cost of a commodity or service which was sold at a profit or loss. The expenditure leaves no property in the hands of the company except the profit on sales. In the same way an outlay for a machine represents an expense if we take a period long enough to cover the machine's life. Depreciation represents a means of distributing the expenses over the period. For the business man, a machine is capital having some similarity to insurance paid in advance. Both should be marked off over the period for which the outlay constitutes an expense. The fact that a plant consists of an organization of a large number of machines does not alter the nature of the case."

It will therefore be recognized that depreciation is essentially a problem in cost accounting. It is the problem of securing a correct allocation to each year's income account of an expenditure that constitutes an expense for a certain period of time. Even if no other interest than the interest of stockholders of different years were involved, the need of a correct profit and loss statement as a basis for the distribution of profits each year would require the setting up of a depreciation account as an item of expense. The Federal Trade Commission has already announced that no system of accounts can be satisfactory which does not recognize depreciation as an element of expense. Regulations of the Treasury Department for the assessment and collection of the income tax make the following specific provision for the inclusion of a depreciation allowance in the expenses deductible from revenue:

Regulations (No. 33) concerning the tax imposed by Section 2, Act of October 3, 1913, on Net Income of Individuals, Corporations, etc.; Treasury Department, Commissioner of Internal Revenue, January 5, 1914, contain the following:

ART. 113. The net income shall be ascertained by deducting from the gross amount of the income of such corporation received within the year from all sources:

\* \* \* \* \*

Second: All losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation by use, wear and tear of property, if any \* \* \*

ART. 129. The deduction for depreciation should be the estimated amount of the loss, accrued during the year to which the return relates,

in the value of the property in respect of which such deduction is claimed, that arises from exhaustion, wear and tear, or obsolescence out of the uses to which the property is put, and which loss has not been made good by payments for ordinary maintenance and repairs deducted under the heading of expenses of maintenance and operation. This estimate should be formed upon the assumed life of the property, its cost, and its use. Expenses paid in any one year in making good exhaustion, wear and tear or obsolescence in respect of which any deduction for depreciation is claimed must not be included in the deduction for expense of maintenance and operation of the property, but must be made out of accumulated allowances, deducted for depreciation in current and previous years.

ART. 130. The depreciation allowance, to be deductible, must be, as nearly as possible, the measure of the loss due to wear and tear, exhaustion, and obsolescence, and should be so entered on the books as to constitute a liability against the assets of the company, and must be reflected in the annual balance sheet of the company. The annual allowance deductible on this account should be such an amount as that the aggregate of the annual allowances deducted during the life of the property, with respect to which it is claimed, will not, when the property is worn out, exhausted, or obsolete, exceed its original cost.

These regulations constitute the official recognition of the depreciation in productive plant generally understood in the professions of the engineer, the economist, and the accountant, and well summarized in the following quotation from a paper by P. D. Leake, author "Depreciation and Wasting Assets":

"The depreciation of productive plant occurring each year is an operative expense as much as operative wages, and productive plant has two very marked characteristics, one being that, other things remaining the same, it tends to fall in present value to a willing purchaser, having equal opportunities for employing it, in direct relation to the proportion of its economic life period which has expired, and the other marked characteristic being that the advantages or consideration obtained by the undertaking from the existence of its productive plant are spread with approximate evenness over the whole period of the economic life of the plant. In assessing this operative expense, therefore, the nearest approach to accuracy will be obtained by estimating the life of each class of productive plant with due regard to all known facts as well as to probabilities, and basing the assessment upon this. The narrow view \* \* \* \* that if productive plant has been well maintained and works as well as ever, depreciation may be omitted from operative expense, or only provided out of surplus revenue when convenient, is a dangerous fallacy."

### III.

While correct depreciation accounting is important in any enterprise on account of its effect upon the equities of stockholders in different years, it is doubly important in case of public utilities, where the expenses are charged against consumers through the rates. In so far as the policy of regulation is depended upon to take the place of competition in fixing the rates near the normal cost (including a fair return upon investment), regulation must see to it that the costs or expenses of each year are correctly stated. Were a public utility in 1916 to purchase a supply of coal sufficient for 1917, it

is manifest that no rate-fixing authority would compute 1916 costs on the basis of a two years' supply of coal, or 1917 costs on the basis of no coal purchased. Any such neglect of cost-accounting principles would result in an unfair discrimination between the customers of 1916 as compared with those of 1917. Proper cost accounting requires that the rates for each year shall provide merely for the expenses incurred in that year. The expenses include capital consumed whether the consumption is visible, as in the case of coal, or invisible, as in the case of longer-lived instruments of production. The courts in their decisions in rate cases as well as franchise tax cases have been explicit in this matter. Thus the United States Supreme Court in the leading case of the City of Knoxville vs. Knoxville Water Company (212 U. S. 1, 10) said more than seven years ago:

*"A water plant, with all its additions, begins to depreciate in value from the moment of its use. Before coming to the question of profit at all the company is entitled to earn a sufficient sum annually to provide not only for current repairs but for making good the depreciation and replacing the parts of the property when they come to the end of their life. The company is not bound to see its property gradually waste, without making provision out of earnings for its replacement. It is entitled to see that from earnings the value of the property invested is kept unimpaired, so that at the end of any given term of years the original investment remains as it was at the beginning. It is not only the right of the company to make such a provision, but it is its duty to its bond and stockholders, and, in the case of a public service corporation at least, its plain duty to the public."*

The court has reaffirmed this decision in all subsequent rate cases. Thus in the important Minnesota rate cases (230 U. S., 1913), the court expressly disapproved certain findings of the Master because of his failure to deduct accrued depreciation from the estimated cost of reproduction new.

The New York courts have arrived at the same conclusion in cases involving the franchise tax law. Thus as long ago as September, 1908, the Appellate Division stated that—

*"The net income of a corporation for dividend purposes cannot be determined until all taxes, depreciation, maintenance and upkeep expenditures have been deducted; otherwise the dividend is not paid from the earnings but by a depreciation of the capital account."* (People ex rel. Jamaica Water Supply Co. vs. State Board of Tax Commissioners 128 Appellate Division, 13.)

The earlier decisions restricted the depreciation allowance to physical depreciation but the more recent decisions have included functional depreciation also. One of the important decisions on functional depreciation supported its conclusion by reference to the Uniform System of Accounts prescribed by this Commission. In November, 1910, the Supreme Court after referring to the systems of accounts prescribed by the New York Commissions for street railways and the 1910 amendments of Section 55 of the Public Service Commissions Law relative to certain expenditures to be

certified by the Commission as not "reasonably chargeable to operating expenses or to income" concludes that—

"This would appear to be a legislative recognition of the systems adopted providing for the charge, out of income, of items for obsolescence and inadequacy, upon a plan which apparently according to the state was reasonably capable of ascertainment from the experience of the corporation itself.

\* \* \* \* \*

*Here is a Commission, having supervision of the operations and accounts of relator, which has the right to insist upon the establishment of a fund to cover some obsolescence as well as ordinary depreciation."* (People ex rel. Brooklyn Heights Railroad Co. vs. Tax Commissioners, 69 Misc. N. Y. 659).

While the two New York cases above cited were tax cases, the principles therein established were recognized in the authoritative rate case of Kings County Lighting Company vs. Public Service Commission decided by the Appellate Division in 1913 and sustained by the Court of Appeals in March, 1914, upon all questions submitted with the exception of "paving" (as to which the court reversed the Appellate Division and sustained the Commission's procedure of excluding from the valuation allowances for paving not paid for by the company). The question of depreciation was ably argued by Charles F. Mathewson, counsel for the Consolidated Gas Company as *amicus curiae*, whose theories \*\*\* were held by the court to be "interesting" but inconclusive. The court gave careful consideration to the precedents established in the special franchise tax cases and found them to be in substantial agreement with the ruling of the Supreme Court in the Knoxville case, which it quoted at length and then concluded as follows:

"This quotation completely answers the contention on the part of the relator that no allowance should be made for depreciation, because the evidence is that the efficiency of the relator's plant continued to be equal to 100%; since it is manifest that deterioration to some extent must precede the loss of efficiency, and the mere fact that the efficiency remains stable does not necessarily contravene the other fact that deterioration has set in.

In the case at bar the commission followed the rule laid down by the Court of Appeals in *Peo. ex rel. Manhattan Ry. Co. vs. Woodbury* as to the method of estimating the depreciation and the rule indicated by the *Knoxville* case of deducting the thus ascertained amount of accrued depreciation from the cost of reproduction new, to ascertain the present value of the tangibles in use. We think this entirely proper, especially in view of the fact that it allowed appreciation in land values." (People ex rel. Kings County Lighting Co. vs. Wilcox et al, 156 App. Div. 616)

In the Manhattan Railway case referred to, the opinion of the Court of Appeals was that—

"the annual allowance for depreciation should be computed by dividing the values of the various accounts of tangible property by the number of years of their respective estimated physical lives." (People ex rel. Manhattan Ry. Co. vs. Woodbury, 1911, 203 N. Y. 235.)

## IV.

Nearly three-quarters of a century ago the Legislature of New York recognized depreciation as an item of expense. The form of annual report prescribed in the General Railroad Law of 1850 included among the expenses of maintenance four depreciation accounts. The tendency of regulations promulgated by state boards under authority of law, together with the decisions of the courts in the past ten years, has been to define more carefully the method of accounting for depreciation.

If the Commission were now to adopt the recommendations of the companies regarding the elimination of the depreciation account, it would in effect reverse an established policy of the State. The substitute proposed calls for the inclusion in operating expenses of the average cost of renewals, but says nothing as to the period for which such average cost is to be computed. It therefore means little or nothing, according to the interpretation of individual managers. In effect it denies the existence of depreciation during the period of accrual and prior to the actual realization thereof at the time plant is retired from service. A public utility now starting in business might conceivably operate for ten years without incurring any considerable retirements or replacements, although its property would deteriorate and its capital be consumed in every year of the period. The change now proposed would permit such a company to ignore depreciation as an element of expense and publish financial statements that would mislead stockholders and deceive investors and the public it serves. Cases of this kind are too numerous to mention; the history of corporation finance is strewn with the wrecks of public utilities caused by neglect of elementary accounting principles regarding depreciation. What the financiers think of depreciation was well stated in an address of A. M. Harris, of the investment house of Harris, Forbes & Company, before the American Electric Railway Association in 1913:

"The growth of the electric railway business in this country has been nothing short of phenomenal. Twenty-five years ago there were only eighty-six miles of electric railways in operation in the United States, while to-day, according to the best estimates I have been able to obtain, there are about forty-three thousand miles of track. The changes in the art have been no less remarkable. The electric overhead trolley cars which were first operated were re-built single truck horse or cable cars with electric equipment installed, and they bumped along over lightweight, poorly laid rails. Compare these ancient arks with the modern double truck, commodious trolley cars rolling along on well laid heavy rails such as may be seen operating on the street of practically all of our major cities. This is taking extremes, but it gives rise to the pertinent and pointed question that I am coming to, namely, what has become of the investment which was represented by the old cars and equipment that has, in the comparatively short period mentioned above, either worn out or become obsolete and found its way to the junk pile? The answer is plain. If the day of their obsolescence was not anticipated and provided for through some adequate depreciation reserve, the



investment was irretrievably lost and similar unprovided for processes occurring with respect to all of the property used in the operation of an electric road have undoubtedly been a very material factor in causing the long list of receiverships and reorganizations that is to be found in the history of the electric railways of this country.

Depreciation is a subject so comprehensive that it is almost inexhaustible. Numberless monographs have been prepared as to the most scientific method of accurately figuring it—

- Straight-line method,
- Sinking Fund method on various rates of interest,
- Insurance method,
- Decreasing payments toward end of life,
- Per cent of gross earnings basis,
- Per cent of unit output basis,
- Loss of value as determined from loss of efficiency,
- Mortality method,
- Fifty per cent method.

Technical writers have also been prolific as to the relative advantages of establishing reserves as compared to sinking funds for the reduction of debt in providing for depreciation. I shall not attempt to discuss the technical questions herein involved but will leave that phase of the subject to those more expert, with the brief comment that we have found that around 22 per cent of the gross operating revenues of the average electric railway property comes very close to being the proper amount which should be set aside from year to year for maintenance and depreciation. This arbitrary percentage of gross checks surprisingly with the amount arrived at by estimating the average life of the various parts of the property and arriving at a depreciation allowance in that manner. \* \* \* \*

Maintenance and depreciation of an electric lighting property measured as a function of gross operating revenue will require only about three-quarters of the amount that is required in a street railway property."

On the part of the engineering profession the conclusions reached by its most eminent representatives are substantially identical with those of economists and bankers. In 1913 a special committee of the American Society of Civil Engineers made a comprehensive report on valuation for the purpose of rate-making, in which it expressly stated that the depreciated value of property should be the basis for rate-making. Regarding the method of accounting for depreciation and the handling of depreciation funds, reference may be made to a recent address by Bion J. Arnold, the consulting engineer of Chicago, who has done a great deal of valuation work for public authorities as well as utility companies. In speaking at the convention of the American Electric Railway Association in October, 1915, Mr. Arnold said, among other things,—

"It is a curious commentary upon the rapid progress of utilities that some operators still deny the existence of depreciation and solemnly proclaim their ability to keep a property in a condition 100 per cent good, whatever that may mean. It can be proved that, when a property is old enough so that the cycle of life of its longest-lived depreciable element has expired and a renewal is due, the average 'condition' of all the depreciable elements cannot be more than 50 per cent good—i. e. 50 per cent of the service value (plus salvage) and that a higher percentage would be economically unsound. This does not mean that half of the total investment has disappeared, because some elements, such as land values, do not depreciate. With 85 per cent

depreciable and 15 per cent salvage, the 50 per cent theory would result in an economical over-all condition of only 65 per cent.

\* \* \* \* \*

Until a better understanding is had by the industry in general, it is recommended that the straight-line method in its simplest form be studied in connection with the establishment and maintenance of a renewal fund so invested as to earn interest at as high a rate as possible \* \* \* \*

It is manifestly unwise for a fund to earn only 2 1/2% in the bank while it could earn from 5 per cent to 7 per cent in the property. Under proper safeguards as to public supervision of investment there is no logical reason why the fund should not be thus reinvested for extensions and betterments thus automatically decapitalizing as much of the property as is constantly disappearing." (Electric Railway Journal, October 9, 1915.)

(The remainder of the memorandum relates to commission practice throughout the country and is here omitted.)

The PRESIDENT. Have you any motion to make, Mr. Weber?

Mr. WEBER, of New York. There are just two matters in the report that I should like to see discussed by the Association, and in order to bring them up, I move the adoption of the report, and also that the matter of limiting the federal authority over the accounts of local utilities that are merely incidentally engaged in interstate commerce, such as very many of the utilities that cross state boundary lines and do very little freight or express business, be referred to the Executive Committee for action.

The other matter is as to the organization of an association of statisticians and accountants of the public utility commissions, and its relation to this Association. Such an association might conceivably be made a section of this Association.

For these reasons I move the adoption of the report, in order that these matters may receive discussion.

Mr. ELMQUIST, of Minnesota. Mr. President, I would simply like to suggest that the part of the report which refers to the organization of separate associations on statistics and accounts be referred to the Executive Committee, so that Committee may consider it and make its report to the Association.

The PRESIDENT. Possibly it would be better to have a separate vote upon that.

Mr. ELMQUIST, of Minnesota. I make that motion.

The PRESIDENT. The motion is that that part of the report which relates to the organization of a separate association of statisticians and accountants be referred to the Executive Committee. Is that motion seconded,

The motion was seconded and unanimously agreed to.

The PRESIDENT. That section of the report is referred to the Executive Committee.

Mr. THORNE, of Iowa. Mr. President, this report is a very able paper. There are one or two phases of it which I want to suggest to your mind briefly. I believe that the time has arrived when public utility companies should have forms developed and prescribed

by public authority. That was suggested to me this morning by Mr. Decker. You have developed a very elaborate system of accounts for your railroad companies, through the splendid work of certain commissioners in recent years, Mr. Commissioner Meyer of the Interstate Commerce Commission having been Chairman of the Committee on Statistics and Accounts. Different states have developed accounting forms for certain utilities. There are some variations. I understand there is a very substantial variation between the Wisconsin Commission rules and the Interstate Commerce Commission rules in regard to certain companies.

The state of Iowa does not have jurisdiction over utilities, aside from steam railways, interurban railways and transmission lines. Only within one year have we had jurisdiction over transmission lines. But from the standpoint of an observer it seems to me that it is time for definite uniform accounting forms to be developed, and this Association is the one to develop them.

There is in this paper a great deal of discussion of different principles to which I should hesitate about committing myself. One relates to depreciation. A flat percentage is suggested, three per cent for one class of utilities, and three and one-half per cent for another class. If that is at all analogous to the item of railroad depreciation, it is very doubtful whether we are in a position to recommend any such flat percentage. In the railroad industry there is a very great conflict of interest between the investor and the consumer. Of course the consumer wants to see the property properly maintained. The statistician who approaches these questions largely from the standpoint of the investor will naturally insist on a higher percentage. Both desire to see the property properly maintained, and yet I have heard able experts testify that they were taking care of the depreciation of freight cars out of repairs and renewals. If that be true, then an allowance for a reserve for depreciation is an absolute duplication, to the extent that it is taken care of out of repairs and renewals.

The chief statistician for the Burlington Railroad, in the 1910 Advanced Rate cases, added a large sum of money to the apparent net revenues, because these items were not compiled on the same form on which they had been compiled in previous years.

That fact lends great significance to the suggestion that as soon as possible carefully compiled uniform forms should be prepared, so that you will not have constant changes in the items of the classification. If any man insists that the property should be properly maintained, that it is wrong to let it run down and to consume the net revenues in dividends instead of keeping up the property, I agree with him. I do not take issue with him on that proposition for an instant. But on the other hand, if you make an allowance for depreciation which constitutes a duplication in the expense account, and thereby enable a company to build up its property out of operating expenses, you are doing a wrong of another character.

The Pennsylvania Railroad Company increased its depreciation allowances for locomotives to the amount of 110 per cent per engine in one year, and that year happened to be the year when the Advanced Rate case was pending. It amounted to over \$2,000,000 a year.

There are some companies that rebuild their cars in their shops more than other companies do. Now if that be true, it will be somewhat difficult to adopt proper percentages.

Recently I was examining the depreciation allowances made by an engineer employed by the Interstate Commerce Commission. They showed a depreciation allowance for some cars down to a condition of 30 per cent, and of other cars of the same serial number, purchased the same year by the same railroad, in the same service, a condition of seventy per cent. Now what was the reason? Because the latter cars of the same serial number had been rebuilt in their shops. The company that rebuilds its cars will keep them in service a longer term of years, charging the cost of rebuilding to operating expenses. Now if you let that company set aside the same amount of money for approved depreciation that another company sets aside which does not rebuild its cars, which abandons them and puts in a new style of equipment, you are not giving the proper percentage in both cases.

For these reasons I suggest that it is very doubtful whether this Association is prepared to-day to recommend a total depreciation allowance of three per cent or three and one-half per cent for every class of utilities.

There may be other phases of the report as to which later we may find ourselves somewhat embarrassed by formally committing ourselves to them at this time.

I heartily approve of the idea that investigation should be thoroughly prosecuted looking toward a more uniform depreciation allowance. The present variation, from one-half of one per cent on one railroad, to six or seven per cent on another railroad, seems absurd, but I am not prepared at this time to commit myself to any specific allowance; and because it is such a general discussion, there being no definite recommendation as to what forms shall be adopted, I move that the report be received and printed.

Mr. HALL, of Nebraska. Mr. President, a question of privilege. Let me ask Mr. Thorne, if the capitalization were fixed, if the basis for a rate of return were fixed, and also the rate of return, if those two things were determined, what difference would it make as to the amount of money set aside for depreciation? If all the balance of the operating income were set aside for maintenance and depreciation, and there should be a surplus, and that surplus should be used in extensions and betterments, I say what difference would it make, as to the question of depreciation?

Mr. THORNE, of Iowa. The day may come in some future year of omniscience on the part of mortals when we will be able to de-

termine how large dividends a company ought to have, and how much net revenue it ought to have, and how much its capitalization should be, and then we may be able to prescribe those things. I do not know; but that day is not here yet. The capitalization is not your basis. The fair value of the property is the basis, and our task is a practical undertaking. We endeavor to analyze the tendencies of net earnings, and we endeavor to compare the net earnings of various railroads. The problem being of a practical character of that kind, it seems to me that we should not permit a company to show in its accounts a factor in operating expenses which more than maintains it up to one hundred per cent efficiency. There should be no duplication in the accounts. Otherwise, it permits a company to show a small net revenue when it is large, or a large net revenue when it is small, if the company can adjust that back and forth.

Of course it is important that there shall be more uniformity in depreciation allowances. I endorse that, but the depreciation allowance for one road cannot be the same as that for another road, if the policy of the two roads is different in the respects to which I have referred.

Mr. HALL, of Nebraska. The only point I was trying to bring out is this: I can readily see that if the amount of capital were fixed, upon which a utility is allowed to receive a return—I do not refer now to the outstanding stocks, bonds and notes, but I mean the amount upon which it is allowed to receive a return—and if the rate of return is also fixed, when those two things are determined it does not make so much difference if the allowance for depreciation is too high. Rate-making would be comparatively simplified if those two questions were settled; because if in making the rate it is made a little too high, and all the operating income is then used for operating, maintenance and depreciation, and the payment of a rate of return that has been determined upon, the balance of the money might be spent in extensions and betterments. If this balance is never capitalized, and never allowed to be included for a return, the rate-paying public then becomes a participator in the profits of the utility. In other words, the rate-paying public becomes part owner; and if the rate-paying public becomes part owner just in proportion as it has paid a rate that is too high, it does not make so much difference then to the public if the rate is too high, except that the man who is paying the rate to-day may be paying a rate which is too high, which will be building betterments and extensions for somebody to use to-morrow.

I have not heard this discussed by other commissioners except to a very limited extent, and possibly I may not see the matter with all the light turned on; but it has occurred to me over and over again that there is something in what I have just said.

Mr. CARR, of New York. Mr. President, I am particularly interested in that portion of the report which deals with the question

of the association or committee of accountants and statisticians, because they will deal with the question of standardization, which to my mind is a very important one, not only as regards commissions, but as concerns corporations; and I would like to ascertain, if possible, when the Executive Committee will bring up that subject for discussion, or make its recommendations; because I would like to be here at the time, and I may not be here if it is delayed too long.

The PRESIDENT. No doubt Mr. Elmquist will give you notice of that.

Mr. ELMQUIST, of Minnesota. The Executive Committee will meet immediately after the close of this afternoon's session.

### CAR SHORTAGE.

The PRESIDENT. The hour has come for the election of officers, as provided by the rule under which we are working, and this discussion must be postponed until after that is attended to. I have promised to recognize Mr. Aylesworth of Colorado to bring to the attention of the Association a matter of importance, as he notifies me. I do not know what it is. It must be postponed if it is going to take more than a few minutes.

Mr. AYLESWORTH, of Colorado. I would like to make a statement which will take only a minute, and which will perhaps provide food for thought by this body.

The Colorado Commission are present at this meeting to acquire what we can in the way of information and intelligence from the papers read and other matters before us; but there is one matter of very vital importance confronting the Commission, as I presume it is confronting each one of you to some degree. To our surprise and disappointment we learned to-day that the paper on car service and demurrage is not to be read.

The PRESIDENT. There is no report before this Association on that subject.

Mr. AYLESWORTH, of Colorado. The Colorado Commission have a report which has been made to us, which however we do not care to read to this body. This report was made to our Commission by a committee of inspectors from the Interstate Commerce Commission now at work in Colorado, and by a committee of inspectors working for the Colorado Commission, covering the car shortage question. We presume the situation is somewhat similar in every state, but our Commission is receiving hundreds of telegrams every day, from shippers in Colorado, and the situation is terrific. We intend to take up our matter with the Interstate Commerce Commission while we are here; but certainly the most serious question that confronts any commission in any state to-day is the car shortage question, and it is the most serious question confronting the Interstate Commerce

Commission. Certainly there should be some discussion in this body upon that question, with some recommendation. It is a large question. Perhaps it causes a smile when we talk of its solution, but it must be solved. We have raised our demurrage rates, we have carefully looked after the cars within the state of Colorado, and have compelled the movement of trains without too long a wait for tonnage; but there is a bigger question that confronts us in regard to the movement of these cars; and certainly during some part of this meeting there should be some time set apart for the discussion of the car shortage question. I hope we may have a chance to present that matter. (Applause.)

The PRESIDENT. I have no doubt you will have the opportunity.

### ELECTION OF OFFICERS.

The PRESIDENT. We will now proceed with the election of officers, as directed by the Constitution. Nominations for the office of President for the ensuing year are now in order. Whom will you have for your President for the ensuing year?

Mr. WHITNEY, of New York. Mr. President, on behalf of New York I am very glad of the opportunity to place in nomination the man who is now First Vice-President of the Association, Mr. Max Thelen of California. I do this because New York has a very cordial appreciation of the fact that the California Commission is one of the best commissions in the country, and that this is particularly due to the very great work done on the Commission by Mr. Thelen. I know that this Association appreciates the efforts that Commission made last year with respect to our meeting in San Francisco. I therefore place Mr. Thelen's name in nomination for President. (Applause.)

Mr. LEWIS, of Washington. Mr. President, on behalf of the state of Washington I second the nomination of Mr. Thelen.

Mr. RICHARDS, of South Carolina. On behalf of South Carolina I second the nomination of Mr. Thelen.

Mr. THOMPSON, of Illinois. On behalf of Illinois I also second the nomination of Mr. Thelen.

Mr. HALL, of Nebraska. Mr. President, it is with peculiar pleasure that Nebraska seconds the nomination of Mr. Thelen, an old Nebraska boy.

Mr. THORNE, of Iowa, I think the rest of us can record our seconds in the vote. I move that the nominations be closed, and that the Secretary cast the ballot of the Association for Mr. Thelen for President. (Applause.)

The motion was unanimously agreed to.

The PRESIDENT. By the unanimous vote of the Association the Secretary will cast the vote for the election of Mr. Thelen of California for next President of the Association. (Applause.)

Mr. THELEN, of California. Mr. President, I want to express my very sincere appreciation of this honor which has been conferred. Frankly I regard it more as an opportunity for service than as an individual honor conferred either upon myself or upon the Commission of which I am very proud to be a member. I believe in action more than in words, so I am not going to inflict a speech upon you. All I ask, and I know that I will get it, is the most cordial co-operation on the part of the members of this Association. (Applause.) I feel that this next year has before it a problem as important, if not more important, than any problem that has ever come up before the National Association of Railway Commissioners, and with the help of all the commissions and of every member, I would like to have it said, after this next year is over, that this Association has done its full duty in a big, broad gauge way in protecting the interests of the people of the United States as far as the public utility corporations are concerned.

I want to thank you very much. (Applause.)

The PRESIDENT. Nominations for the office of First Vice President are in order.

Mr. CANDLER, of Georgia. Mr. President, we have looked from the east to the west so successfully that now I want to cast our eyes to the east, and I nominate Mr. Edward C. Niles of New Hampshire for First Vice President. (Applause.)

The PRESIDENT. Are there any other nominations?

Mr. STUTSMAN, of North Dakota. In behalf of North Dakota I desire to second the nomination of Mr. Niles.

Mr. FUNK, of Illinois. I move that the nominations be closed, and that the Secretary be directed to cast the ballot of the Association for Mr. Niles for the office of First Vice President.

The motion was unanimously agreed to.

The PRESIDENT. By the unanimous vote of the Association Mr. Niles is elected First Vice President. (Applause.)

Mr. NILES, of New Hampshire. Mr. President and gentlemen, I have great respect for the customs and traditions of this Association, but there is one custom which I have always regarded as superfluous. That is the custom of asking the person elected to office whether he accepts. It is unimaginable that any commissioner would decline this honor. For myself I make all possible haste to accept before it is too late. (Applause and laughter.)

The PRESIDENT. Nominations for Second Vice President are in order.

Mr. SHAW, of Illinois. Mr. President, we have looked to the west for our President, to the east for our First Vice President, and now may we look to the north for our Second Vice President?

Illinois takes great pleasure in nominating for Second Vice President Honorable Charles E. Elmquist of Minnesota. (Applause.)

Mr. CARR, of New York. Mr. President, it would seem to be a custom in this Association to recognize the earnest work of the men



holding office, and I think it is a custom that should be faithfully followed, regardless of a man's political affiliations.

On behalf of the Second District of New York I wish to say that I believe the gentleman who has just been nominated is entitled to this recognition. He has been a most earnest worker in the field in which we are laboring, and it gives me the greatest pleasure to second that nomination.

Mr. WORTHEN, of New Hampshire. On behalf of New Hampshire I wish to add a very emphatic second to Mr. Elmquist's nomination for Second Vice President.

The PRESIDENT. Are there any other nominations?

Mr. TAYLOR, of Nebraska. Mr. President, on behalf of Nebraska I move that the nominations be now closed, and that the vote of this Convention be cast for Mr. Elmquist for Second Vice President.

The motion was unanimously agreed to.

The PRESIDENT. The unanimous vote of the Association is cast for Mr. Elmquist for Second Vice President. (Applause.)

Mr. ELMQUIST, of Minnesota. Mr. President, at the close of a very interesting and heated national election it is indeed refreshing to find that the National Association can proceed with its elections in such a harmonious way. I take pleasure in accepting the office of Second Vice President. (Applause.)

The PRESIDENT. Next in order is the election of Secretary.

President-elect Thelen took the chair.

Mr. PRENTIS, of Virginia. Mr. President, we all have so many bad habits that if we once acquire a good habit, it seems to me we ought to cling to it. For a number of years it has been my habit to nominate Mr. William H. Connolly for Secretary of this Association, and I do not want to break that good habit now.

I want to say that Mr. Connolly has been the strong right arm of every President of this Association who has been in office in the eight or nine years that I have been attending these conventions, and he is going to be your strong right arm; and I take great pleasure in nominating Mr. Connolly for Secretary of this Association. And before anybody else gets the floor, I move that the nominations be closed, and that the President of this Association cast the ballot of the Association for Mr. Connolly. (Applause.)

President THELEN. Before anyone else gets the chance to say anything, the nominations are closed, and the President, in accordance with the instructions of the Association, hereby casts the ballot for Mr. Connolly for Secretary.

Mr. PRENTIS, of Virginia. Mr. President, you are a boss beyond anything I have ever seen. I thought you were going to call for a vote; but it is all right. (Applause and laughter.)

Mr. CONNOLLY. Gentlemen, vote or no vote, I thank you. (Applause.)

President THELEN. The next office to be filled is that of Assistant Secretary. Nominations are in order.

Mr. CONNOLLY. Mr. President, it gives me great pleasure to place in nomination the present incumbent, Mr. James Blaine Walker of New York. (Applause.)

President THELEN. Mr. Walker of New York is nominated for Assistant Secretary. Are there any other nominations?

Mr. CONNOLLY. I move that the nominations be closed, and that the ballot of the Association be cast for Mr. Walker.

The motion was unanimously agreed to.

President THELEN. Mr. Walker is elected Assistant Secretary.

President PRENTIS resumed the Chair.

The PRESIDENT. We will now resume the discussion of the report of the Committee on Statistics and Accounts of Public Utility Companies.

Mr. MORGAN, of West Virginia. Mr. President, I would like to inquire of the Chairman of the Committee whether, when the Committee fixes the maximum depreciation at three and one-half per cent for gas companies, that is supposed to apply to both natural and artificial gas? If it is applied to manufactured gas, it may be all right, but as to natural gas it certainly is entirely too low.

Mr. WEBER, of New York. The Committee did not have in mind natural gas at all. That refers to artificial or manufactured gas.

Mr. SHAW, of Illinois. Mr. Chairman, in connection with the recommendation of the Committee, of three per cent for depreciation, if the Committee were to adopt the report it would conflict quite seriously with some findings which have been made in the past by the Illinois Commission. For that reason and other reasons, while I consider the report very valuable, and while the Committee is to be complimented upon the valuable work it has done, and while it will be an aid to the Association and the various commissions, I would second Mr. Thorne's motion that the report be received and printed, so that it will not bind the commissions in any of their findings.

Mr. WEBER, of New York. On behalf of the Committee I accept the substitute motion. As I stated, the purpose was to bring before the Association for discussion the question of jurisdiction over certain local utilities that are incidentally engaged in interstate commerce, and the other question of organizing an accounting section. The latter question has already been taken care of, and as to the former question I would like to amend the substitute so as to provide for referring to the Executive Committee also this question of jurisdiction, and then that the report be received and printed.

The PRESIDENT. You move that that also be referred to the Executive Committee?

Mr. WEBER, of New York. Yes.

Mr. EDWARDS. If I may, I should like to be allowed to say an appreciatory word in connection with the tendency I observe in that

report toward a unification of accounting systems throughout the country. The National Electric Light Association has recently been engaged in tabulating the accounts of the various states. I hold in my hand that tabulation. It was so large and so expensive to print that but three copies of it were printed. This purports to give the nomenclature of the various things in the various states.

That same Committee is now engaged in a comparison of the text of the accounts, and a similar report will be prepared this year. On behalf of our Association therefore I should like to present to this Association and to that Committee this compilation, which has just been prepared. I think it will indicate the lack of uniformity that exists all over this country in regard to these accounting matters so far as public utilities are concerned. Any movement toward a national classification of accounts is very desirable, and while it may be presumptuous or perhaps indelicate for our Association to offer its services, I simply want to say that such experience and knowledge as we have are at the disposal of this Association and will be cheerfully furnished, whenever desired.

The PRESIDENT. I have no doubt the Committee will be very glad to use that information. We are very much obliged to the National Electric Light Association for presenting it.

Mr. WEBER's motion is to refer a portion of the report.

Mr. WEBER, of New York. On the question of jurisdiction over municipal or local utilities that are incidentally engaged in interstate commerce, that it be referred to the Executive Committee.

The PRESIDENT. You have heard the motion. It is on the substitute as amended, that that portion of the report be referred to the Executive Committee.

The substitute as so amended was unanimously agreed to.

The PRESIDENT. The question now is on the motion to receive and print the report.

The motion was agreed to.

## SERVICE OF PUBLIC UTILITY COMPANIES.

The PRESIDENT. Next in order is the report of the Committee on Service of Public Utility Companies. Governor Yates of Illinois is Chairman of that Committee.

Mr. YATES, of Illinois. Mr. President and gentlemen, I would like to say by way of preliminary that some time ago I received a letter from our worthy President, who intimated that the appointment of a man as chairman of a committee was a device designed to make him work, and to do most of the work. I conceived the happy idea of devising work for others to do; so I suggested that inasmuch as the subject assigned to my Committee was susceptible of division into about seven different subdivisions, and there were seven members of the Committee, each one should prepare a subdivision subject to the

discretion of the whole Committee. It worked very charmingly, and the result was that I was able to mimeograph this report, although I did not have time to print it. If Mr. Connolly will distribute my mimeograph copies I will be glad to have it done, and while he is doing it I will say that after the different sections got together I really thought it was a very pretty report; but last night, when we proceeded to discuss one another's fulminations, we convened at 8 and adjourned about midnight, and the report did not look so pretty as it did before, not even the part which I had prepared. So I am not quite so proud of my methods as I was; but when you are assigned as the chairman of a committee on service of public utility companies, it is a good deal like being assigned to discuss the Ten Commandments, or the World, the Flesh and the Devil, all at once. It is a very wide subject, as we have ascertained.

I want to say one other word, Mr. President, while the report is being distributed. That is that this Committee's work is not the work of the Chairman, but everybody has worked, and that is a great gratification to me.

The PRESIDENT. It takes a very high order of ability to get somebody else to work.

Mr. YATES, of Illinois. The Chief Engineer of the Illinois Commission has prepared a paragraph which is to be added to the gas division of the report, but owing to circumstances unnecessary to explain, we simply did not get to it. He prepared his paragraph, but it has not been revised, and owing to two or three committee meetings, I could not get to it.

The report is as follows:

At the last annual convention of the National Association of Railroad Commissioners this Committee was created, and the subject assigned to it has therefore never been discussed by any previous committee.

The service of public utility companies (other than steam railway carriers) covering, as it does, the service of every conceivable kind of public utility (except steam railways) necessarily involves a very broad field and a field which is ever expanding. There are so many kinds of important public utilities embraced within the subject assigned to this committee, such as gas companies, street railway companies, electric light and power companies, water companies, telephone companies, telegraph companies, public warehouse companies and so-called "jitney" companies, that in the opinion of this committee, it would not be inappropriate to have committees appointed to consider and report, in the future, upon the service of each important group or class of public utilities.

In considering the relations between a public utility and its patrons, there is no consideration of more importance than that of the quality of the service rendered. Where the quality of the service is of a high grade, as a rule there are very few, if any, complaints

against such utility, either as to its rates or otherwise, even though the utility's rates may be comparatively high.

The time has passed when the individual or family, living in a city or community, may supply his or its own needs in the matter of water, light, heat, transportation, etc. The rapid transit facilities of a large city, which make it possible for people to live in the suburbs and residential districts, and to engage in business in the down town districts; the complex and intricate telephone system, which enables a subscriber to communicate with all other patrons in a city or community, and also through toll service to reach all important cities and villages of this country; the distribution of electric current for lighting and other purposes; and the systems for supplying, at all times, to all inhabitants, pure water, are no longer mere luxuries, but on the contrary are modern necessities, without which our present day life could not continue. And as the importance of such public utilities' service increases, the necessity for regulation and control of the agencies engaged in furnishing such service, correspondingly increases.

And in connection with a discussion of this subject, it should be borne in mind that the patrons of a public utility are more dependent upon their Public Utilities Commission in the matter of correcting unsatisfactory service, than they are in the matter of securing reasonable rates. The average public utility patron has neither the technical knowledge nor the necessary instruments and apparatus with which to test (and determine) wherein unsatisfactory service that he may be receiving, is defective. This can, however, be done by a Commission, which is usually able to command the services of engineers and other experts, who are capable of making such inspections as may be necessary, not only to determine the character and quality of the service, of the public utility in question, but also, where the service is defective to point out wherein it is defective, and to prescribe the remedy.

The service of public utilities is a subject of regulation primarily by the state commissions. These agencies being in close touch with the local situations, and securing their information from frequent inspections (either personally or through their representatives) of the utilities' properties, and in hearings, involving service questions, are thus peculiarly qualified to deal with the many questions that affect the service of public utilities. It is therefore not surprising to find, that the laws of the various states creating utility commissions, and defining their powers and duties, as a rule grant such commissions broad and comprehensive powers, to deal with and regulate the service of public utilities. The laws, of a number of states, authorize their respective utilities commissions to ascertain, determine and fix, for each kind of public utility, suitable standards of service, by which to measure the quantity, quality, pressure, voltage or other condition pertaining to the performing of the service of

such utility, or the furnishing of its product or commodity to the public. Such laws also empower the state commissions to prescribe reasonable regulations for examining, measuring and testing such service, product or commodity, and to establish reasonable rules and standards, to secure the accuracy of all meters and appliances, used in examining and testing such service, product or commodity.

Practically all commissions, so empowered, appear to have taken steps to prescribe rules, establishing standards of service, for the more important kinds of public utilities, within their jurisdictions. These rules are usually prepared, in tentative form, by the commission, and then submitted to the utilities to be affected thereby, at formal hearings, before being finally adopted and put into effect:

In determining the quality of service furnished by a public utility, it is important that complete records of all factors, bearing upon service, be available. With this in view, most commissions require that such complete records be made by each utility, and be preserved for a certain period, usually not less than three (3) years from the date of making of such records.

In order that a utility may be able to determine the character of the service it is furnishing, it is necessary that it have at hand suitable instruments, for testing such service, and that such instruments be properly maintained. Since most of the gas and electricity now furnished by utilities is metered by the utility furnishing the same, and the consumers' bills are computed on the basis of such meter records, the matter of the accuracy of such meters is of importance. Efficient management demands that such meters be numbered, and a record kept of each, showing the date of purchase, where it has been installed, the results of tests made to determine its accuracy, and other similar data useful for reference.

In order to adequately check and regulate the service of the various public utilities, most state commissions have organized so-called "service divisions." The service division of a public utilities commission usually divides the state into districts, and, through an inspectional staff in each district, observes the character and quality of the service furnished, by the utilities operating therein. Records are kept by such division of the results of its inspections of each utility, within its district. These records are of great value, as an index to the kind of service furnished by the utility in question, and are also of service, in handling and disposing of the various informal complaints, that are made, from time to time, by patrons and consumers, as to the service of such public utilities.

In addition to the above suggestions we have deemed it advisable to briefly discuss separately the matter of the service of some of the more important kinds of public utilities.

## SERVICE OF TELEPHONE COMPANIES.

From the public point of view satisfactory telephone service involves its *quality* its *price* and its *adequacy*.

Adequacy means ability to serve all customers promptly and fully at all times. In a growing city, or growing suburban district, this necessitates and implies planning and providing for facilities (plant and equipment) in advance of requirements. This in turn means a large, rather than a small margin, of idle plant, at certain times; and a liberal rather than a restricted capital account.

A telephone company may decrease its capital account per subscriber, and thus increase its apparent efficiency while somewhat lowering its rates, by not increasing the adequacy of its service. Moreover, any telephone company will, finally, be forced to thus serve its patrons, if it cannot be easily and properly financed, so as to keep well ahead of the demands upon it.

The American public, above everything else, requires (and should be guaranteed) adequate service insofar as regulatory commissions can effect the result. Generally, a cheaper service nor higher technical quality is desirable to the general public, if it can be secured *only* at the expense of adequacy of the service.

Adequate telephone service, to the public as a whole, involves *rural* as well as *urban* development. Rural development *may* not be *possible*, on a strictly self-supporting basis. Urban development may be increased both in volume and value, but not be changed as to cost, through the medium of rural development. If this is true, it appears that it is to the best interests of the public that part of the cost of rural development should be allowed, by regulatory commissions, to be assessed against the *urban* subscribers who benefit from it.

Rural telephone service, to be at all economical and efficient, must group subscribers of a large area into one operating center. This center must be selected along practical grounds which may have no relation to the toll rates, or the natural "service area" (of free intercommunication) or other special service features, to which individual groups of subscribers, in various parts of the area, should be entitled. Therefore, the decision of such service and rate questions should not be made to depend, entirely, upon the location of the switchboard or operating center.

A public service, normally adequate, may fail at the *peak* of the *load*. A daily peak should of course, always be taken care of, but to take care of seasonal or occasional peaks will require more equipment and more capital investment. And it seems that utility service companies should be encouraged (rather than discouraged) in planning to serve the public adequately, even at times when the load is above the normal. Electric light and power companies have to do so.

Admittedly, adequate service of such a nature will cost the public *more* for that *particular* service; but it seems that it will be worth

the difference when the total cost is considered in connection with the total benefits.

In general, first, of course the utility service must be *adequate*.

*Second*, rates should be as low as possible with a good quality of service.

It would seem, therefore, THAT the public (*and* regulatory commissions) should encourage the investment necessary to provide facilities (plant and equipment) *in advance* of immediate requirements; THAT a closer relationship should be established between urban and rural communities, through more extensive development of rural lines; that the rural patron should recognize the *importance* of service of a high quality, and also the *cost* elements involved in providing facilities of the character necessary to furnish such service; THAT the individual *ownership* of equipment should be *absolutely discontinued*; and also the joint ownership of facilities (rural lines), except in instances where isolated rural communities are developed through the co-operative construction of rural lines; that there should be the complete elimination of the so-called stockholder subscriber who heretofore, and in some cases now, enjoys a lower rate for service by reason of stock ownership in so-called co-operative or mutual telephone companies.

#### MONTANA TELEPHONE SERVICE.

Probably the most interesting feature in connection with Montana telephone service is the vast area served and the sparse population in that area. Montana is the third largest of the states of the union; its average length from east to west is 535 miles and its average width from north to south 275 miles. Montana thus embraces an area of 147,182 square miles. In that area is an estimated population of 750,000, or an average population of a fraction over five inhabitants per square mile. Montana embraces a greater area than all of the New England States, New York, New Jersey, and Maryland put together. These states have a combined population of over 20,000,000, and yet there is scarcely any section of this state that has not telephone service of some kind. Within the boundaries of the state there are only four telephone companies of importance, viz. The Mountain States Telephone & Telegraph Company, a Bell corporation, the Four Valleys Telephone Company, which operates several exchanges and toll lines in the northern part of the state, the Northern Idaho & Montana Power Company, which operates in the northwestern part of the state, and the Dakota and Western Telephone Company, another Bell corporation, operating exchanges and toll lines along the eastern border of the state. Aside from these, a large number of small exchanges, rural and co-operative lines, are operated, all connected, where possible, with the larger companies for toll service, and in the case of rural and co-operative companies, seldom furnishing any exchange service.



The Mountain States Telephone & Telegraph Company, formerly a portion of the Rocky Mountain Bell Telephone Company, was a pioneer telephone company giving toll service in the State of Montana. This company deserves a great deal of credit for having extended its lines and exchanges into and through thinly populated sections of the state and for doing a great deal of pioneering at an expense that it could only hope to receive returns upon in future years. At the present time this company has an approximate investment of \$6,500,000.00 and only covers a portion of the state. From east to west this company has one toll line, without including any branches, that is about 775 miles long over which this company gives standard Bell service.

The Four Valleys Telephone Company has lines and exchanges along the Great Northern for a distance of about 200 miles, and runs south along the eastern border of the state about 150 miles, the largest of the towns served being the city of Glasgow with a population of 3500 inhabitants.

The Northern Idaho & Montana Power Company serves the north-western corner of the state from Kalispell west along the line of the Great Northern Railway, with its main offices in Kalispell, there serving the largest community on its lines, which has a population of about 5000.

The Dakota and Western Telephone Company is an interstate company serving a small section in the northeastern part of the state, going west about 70 miles and north about the same distance, from where it enters the state at the city of Mondak.

With the exception of small exchanges,\*the remaining companies, as before stated, are rural lines and co-operative lines. These companies, to a large extent, furnish grounded service, and many of them are fenced wire lines, over which service is intermittent and unsatisfactory.

One of the greatest things telephone companies of Montana have to contend with, is the maintenance of lines during the extreme winters. The distances on toll lines are so great, the impassibility of roads and trails over the mountains, and the scarcity of any desirable patrol station, make this a very serious problem with which the companies have to contend. In the mountain districts many of the lines have to be patrolled on snow shoes, or skis, during the winter: and in the prairie districts, during severe storms and blizzards, patrolling is practically impossible until storms have abated.

Considering all of these features, there is probably no state in the union, where it is as difficult to maintain good telephone service.

#### SERVICE BY GAS COMPANIES.

There is a wide difference in many of the details of management and rendition of service as regards artificial and natural gas

companies. A utility furnishing artificial gas can, with proper effort, so conduct the operation of its plant as to provide a standard quality and a reasonable supply of gas at all times, including its peak load periods.

Owing to the somewhat uncertain supply of natural gas, and the length of pipe lines necessary to transport same from source of supply to consumer, the furnishing of a satisfactory supply, during the winter peak load period, involves a serious problem.

These facts should not, however, be considered as extenuating circumstances, where the management of the utility has been negligent and failed to put forth reasonable efforts to procure by development, or obtain by purchase from producers, a proper and sufficient supply.

Natural gas is usually produced at much less expense than artificial gas, and therefore the prevailing average price charged for it is much less than that obtained for artificial gas.

As a rule it possesses a high heating value; it is therefore a desirable fuel when furnished in reasonably constant quantities, and as a result, the gross revenue of a natural gas utility is, comparatively, much larger than that of an artificial gas utility, whose sales are practically confined to lighting and cooking purposes.

The facts that natural gas possesses a higher heating value, is a convenient and cleanly fuel, sold at a price considerably less than that for which artificial gas can be obtained, are generally considered, by a discriminating public, to offset the inconvenience occasioned by its use, flowing from the fact that a natural gas utility, practically always, has difficulty in furnishing a sufficient supply during peak load periods in severe cold weather.

Notwithstanding these diverse conditions existing in the gas business, it would seem that the general principles of law and equity, so far as relates to service, rates and equipment, applicable to other public utilities in general, should be applied to it. A utility furnishing either artificial or natural gas must, in order to properly discharge its duty to the public, furnish efficient and sufficient service, properly maintain its plant and equipment, and make reasonable expenditures for the extension of its service lines, thereby providing, in a reasonable way, for the convenience and growth of the community which it serves, all at just and reasonable rates.

#### ELECTRICITY SUPPLY SERVICE.

The supplying of electricity for lighting and power and for traction, and more recently for cooking and heating, besides many other miscellaneous uses, has developed remarkably in two decades, and still continues its steady advance; so the use of this form of energy has, in a comparatively short time, become one of the most

vital factors in modern industry and social life and progress. With the increase of demand, for electricity supply service, has grown the importance of securing safe and adequate service. With the possible exception of some smaller and weaker electrical corporations, such utilities have, since the inception of the industry (and more particularly in late years), laid considerable stress upon service, its safety, adequacy, extent and adaptation to demand. Along with the rapidity of the growth of this utility service, there have been many stages in development and forms and types of generating apparatus, supply distributing systems and utilization devices, until at the present generating apparatus (and distribution systems) appear to be in a somewhat general way standardized; and this is to an extent true of devices for utilizing electricity, particularly for the distribution (and adaptation) of power. But the electric light as a device for the transformation of electricity into light appears to leave much opportunity for development, particularly as to economy, which may in the future involve radical changes in systems.

Most of the public service commission laws provide that electrical corporations shall furnish such service, instrumentalities and facilities as shall be safe and adequate, and in all respects just and reasonable. Safety of service is paramount, though sometimes costly. Adequacy of service to meet all reasonable demands, as to quantity and quality of the electricity supply, appears to be to the interest of the utility, as well as to the public; for the service fitted to the real needs and wants of consumers will, generally, without undue costs, stimulate and increase the diversity of the demand, and lead to economy of operation, through the development of the business, provided, of course, service is furnished at reasonable rates. The ease with which electricity can be safeguarded, controlled, distributed and adapted to its various uses, has been a prime cause of the rapid development (and continuous increase) in the use of this form of energy. Discriminations in service are abhorrent; under the common law "there must be equality of rights to all and special privileges to none," as regards service as well as rates.

In general the public service commissions, or utility commissions having jurisdiction over corporations supplying electricity, are empowered to adopt general rules for the regulation of service; and, through study of cases formerly decided and of service rules which have proved reasonable and those which have been adopted by other commissions, many of these commissions have, after formal hearing and consideration, adopted general or standard rules of service. *The codification and analysis of service rules as adopted in many states would appear to be natural work for this Committee.* The Committee is fortunate, however, in being able to report that such work has been done by the United States Bureau of Standards, which has recently issued its circular No. 56, stating in detail the rules adopted by the state commissions, conveniently grouped, and also suggesting standard rules of service based on this study, having

in mind the advantages of uniformity in such rules in the different states of the Union. Circular No. 56 is a pamphlet of some 259 pages, and it is impossible to discuss it at length in this report, particularly as all the matters contained in it are clearly set out, and it is doubtless available to all the members.

Though much progress has been made in the establishment of *general service rules*, it should *not* be understood that such rules are *complete* or *standardized*. Doubtless these rules are steps in the right direction, but often rules which appear reasonable in themselves are not adopted by commissions, because such action would be too drastic and arbitrary as regards a number of the weaker utilities which have been following a practice opposite that required by the rules. For example, it appears reasonable for each utility to own and maintain all service meters, yet, requiring *immediate compliance* with a rule to that effect, *may* work an *injustice* on those utilities whose rates are predicated on the consumer's ownership of meters,—this, perhaps, being in accordance with the franchise provision in connection with a franchise provision for maximum *rates*. Ownership of service connection furnishes another example, though fortunately not so acute for electricity as for water supply. From a study of Circular No. 56, it would appear that few commissions have adopted rules as to reporting and investigation of accidents. This has perhaps occurred because accident reports are made in a separate order, and not in the general order establishing service rules.

The formulation of rules for the extension of mains and the furnishing of electricity service to *lean* territory, involve many problems which have yet to be solved; particularly as to such *extension* as cannot be *reasonably* required by regulative authority, as when the *return* on the additional investment (both present and prospective), is *so small* as to be inappreciable, involving *loss* of the investment as well as *cost* of the service supply. Such questions arise in connection with the extension of municipal limits to include undeveloped territory, where the cost of extensions would be relatively high and the present demand practically nil, and the extensions are perhaps desired to enhance the desirability of sale of real estate. As to the extension of mains, the California Commission has adopted the following general rules:

"A water, gas, electric or telephone utility shall *make such reasonable extensions* in unincorporated territory at its own expense, as it can agree upon with the applicant for service; PROVIDED, that in any case in which construction of extension at the utility's sole expense will, in its opinion, work an undue hardship upon the utility or its existing consumers, the matter may be submitted to the Commission as provided by section 36 of the Public Utilities Act,—unless satisfactorily adjusted by an informal application to the Commission."

"In any case in which an applicant makes a *payment* to secure the construction of an extension by a water, gas, electric or telephone utility, such payment shall be considered as a *loan* to the utility, *to be repaid* under

reasonable non-discriminatory rules and regulations. Interest shall be paid on such loans at the rate of 6 per cent per annum."

But upon rehearing the Commission modified the rule last quoted, saying,

"There are cases in which the revenue to be derived from the extension is not sufficient to justify the payment by the utility of interest on the loan. In such cases, interest should not be paid."

Questions involving safety of construction of overhead wiring and wire crossings and joint use of poles by separate utilities, are arising; and the adoption of standards and the enforcement of them, for new construction at least, seems essential to the settlement of individual cases.

It is our understanding that the United States Bureau of Standards has made extensive investigations and held numerous conferences with interested parties, looking to the preparation of (and suggesting) a "National Safety Code" which, when complete, will be available for the consideration of state commissions.

Classification of service and classification of rate schedules are intimately associated, as for example, service rules for *off peak* service, furnished at relatively low rates. Some efforts have been made by utilities in this (and other countries) to furnish a *lower* and less costly grade of service for those whose individual demands and resources are *small*. The accomplishment of such a result is much to be desired, for while it may for a time entail some voluntary sacrifice by the electric utility, it should lead to almost universal electric service in municipalities, besides being real service to the public. *This suggests a field of effort, in which, perhaps, state commissions may aid in the establishment of a constructive policy.*

#### WATER SERVICE.

Water is essential to existence, and the supplying of water which is pure and wholesome is necessary to conserve the public health; so adequacy and safety are of prime importance in water supply service. Demands for water service vary as for other utility services; but the demands are generally large when the source of supply is naturally low, as in long periods of drought, necessitating in some cases large impounding reservoirs and in others, recourse to large underground supply. Practically all surface water supplies are contaminated or subject to contamination and consequently require treatment such as coagulation and sedimentation and filtration to remove the mineral and organic matter in suspension, and to eliminate disease producing organisms, such as B-Typhosis, the bacteria producing typhoid fever.

Public service commissions having jurisdiction of water corporations, have in recent years been much concerned in securing safe water supply and to that end have required the installation of treating and filtration plants. This appears to be a phase of regulation properly delegated to the regulating authority having jurisdiction over rates, for the purification of water is sometimes expensive and requires large investment on which it is only fair that an adequate return be allowed even if only a small part of the water used directly affects the health of the public.

### STREET RAILROADS.

The use of electricity as a motive power has, within the last decade, resulted in extensive development of means of local transportation; and has added new problems which have been increasing in complexity. This branch of public utility enterprise involves several phases with common elements and varying elements. The identity or diversity of the elements arises out of the differences in the classes of transportation service which we are now considering, that is, urban, metropolitan, suburban and interurban.

The obligation of a local railroad carrier to render adequate service at a reasonable rate is fundamental. What is adequate service and what is a reasonable rate as applied to the different classes of service are questions which can not be determined by standard rules applicable to all classes.

As to service, the problem of a smaller locality is different from that of a larger. In the smaller, what is sought to be accomplished is to provide a means of transportation along a definite route at a rate which, while compensatory to the carrier, is not prohibitive to the patrons. The larger community, however, has more than one route and several areas of development. The metropolis has, as its very important social and economic problems, the distribution of population and the convenient and comparatively inexpensive access between one center or route and others. Whereas, in a smaller community, the riding population can *adjust* itself to the carrier's schedule of service, if it fairly meets their needs, the larger community demands that the carrier adjust *itself* mainly to the requirements of the riding public, including the shifting of tides of traffic. In metropolitan and interurban service, the questions of rush hour and non-rush hour traffic are intricate and difficult, due to the great difference between the demands in equipment, motive power and labor of each class. Even the differences existing, between the more extended rush hour period of the morning, and the restricted, more congested rush hour period of the evening, are factors which increase the difficulties. The use of the nickel as the fare unit, and the statutory provisions limiting the rates chargeable by street railroads, add

other features to be considered, in connection with the service which the carrier can afford to furnish for the unvarying rate.

It is no answer to assert that the questions may be more local than general, or that they could be formulated with respect to the major number of small communities, leaving to the larger cities of the country the solution of their own peculiar problems. The questions may be local in application but they are nevertheless extensive and country-wide in interest.

The equipment used by street railroads, both rolling and stationary, should at all times be in a safe operating condition. Nothing can excuse a disregard of this prime duty. The character of the equipment should be determined by capacity and traffic requirements. It is obvious that a fixed number of cars should not be prescribed, without reference to the carrying capacity of those cars. In adopting a particular type of car, carriers should seek to provide additional seats rather than additional standing room.

The main elements in schedules of operation are (1) accommodation furnished by seats for passengers, (2) frequency of operation, and (3) limiting points of loading and traffic movement. The first two elements apply to service in all localities, the last element mainly to metropolitan operation. It is not sufficient to provide a comfortable riding place for each passenger boarding a street railroad car, when he is obliged to wait for a car for so long a time as to result in inconvenience. Adequacy of service can not be obtained where passengers have to wait an unreasonable length of time for cars. The very character of street car service implies far more frequent operation than that of steam service. Street railroad carriers are prone to contest this claim upon the ground that the traffic offering does not warrant more frequent service. Of course, demands as to frequency of service may be unreasonable. Short of that, the public is entitled to liberal consideration, as encouraging more frequent use of facilities, assisting communal development and promoting the carrier's prosperity.

The seating problem varies almost proportionately with the area and population served. The Public Service Commission of New York of the first District early prescribed a standard of a seat for each passenger at the point or points of maximum loading during given periods of minutes or hours, or the operation of at least a stated number of cars past such point or points, or in the case of some of the lines the maximum number of cars that can be operated over the tracks. In a few instances, a ten or fifteen per cent excess of seats over passengers was required. The purpose of this was to afford the carriers freedom of management in formulating their own operating schedules providing the end sought by the Commission was accomplished. This freedom the carriers themselves sought. During the past year, however, when the Commission attempted to enforce orders prescribing such standards, through court proceedings, some of the carriers raised the contention that the Commis-

sion's orders were too general for enforcement by mandamus. The lower courts with varying reasoning sustained the contention, but the Commission has taken an appeal to the Court of Appeals, and it remains to be determined whether the Commission's original plan is to be sustained or whether the Commission will have to assume the function of prescribing and formulating precise schedules of operation.

The rush hour evil in large centers of population is one which may not be easily eradicated. It may be minimized by routing and terminal facilities. Distribution of population through various routes and lines will relieve the pressure from particular lines. Avoidance of terminal congestion by methods of operation and trackage arrangements is also vital. However, excess loading is almost inevitable, but the degree of excess should be regulated. Carriers have sometimes asserted an absolute right to operate cars with a percentage of standees during rush hour periods. No such right exists. Excess loading can generally be prevented during non-rush hours, and if it cannot be avoided during rush hours it should be minimized.

Congestion at loading points, due either to density of passenger traffic or to physical or track limitations, is a problem largely metropolitan. By providing a sufficient number of guards, controlling the course of ingress and egress, and using informative signals, a good deal of this trouble can be obviated. The adoption of traffic rules to regulate the movement of vehicles on streets is another means of relief.

Public service commissions with extensive powers of regulation are usually vested with authority to require reasonable extensions of mains or lines of various classes of utilities. Their powers with regard to street railroad extensions are more limited. In some states this is due to the fact that the route of a street railroad is fixed by its charter along a definite line rather than in a certain locality, and that the power to grant franchises is controlled by local authorities and abutting property owners. Without the local franchise and consent by property owners a carrier cannot extend its line. It is apparent, however, that the full benefit of regulation can not be obtained without power in the Commissions to require extensions of street railroads in cases where the existing facilities do not go far enough. There need be no more apprehension as to whether this power will be exercised reasonably than there is now with reference to the exercise of the power to require the extension of gas, electric and water services.

### CONCLUSION.

In conclusion, your Committee desires to make the following general recommendations:



1. That the matter of regulating the service of public utilities be vested (as is now done by many of the states) in the public service commissions of the various states.

2. That each State Commission establish standards of service for each class of public utilities within its jurisdiction.

3. That inasmuch as some kinds of public utilities, for example, telephone systems, are not confined to state boundaries, some uniformity of standards is desirable, to the end that a single enterprise, doing business in several contiguous states, may not be required to observe a different standard in each state.

4. That each State Commission prescribe forms, upon which the various classes of public utilities shall be required to keep a record, of the important factors that indicate the character of the service of such utility.

5. That each Commission establish and maintain a Service Division to inspect (and from time to time determine) the quality and character of the service furnished by the various public utilities.

6. That each Commission recognize at all times the importance of adequate service to the public, and that it take such steps as may from time to time be necessary to insure the furnishing of adequate and efficient service by public utilities.

JOHN M. KINKEL, *of Kansas*,  
HOWARD B. SHAW, *of Missouri*,  
TRAVIS H. WHITNEY, *of New York*,  
RICHARD YATES, *of Illinois*.

Mr. YATES, of Illinois: Mr. President, I move the adoption of this report.

### JUDGE PRENTIS.

Mr. CANDLER, of Georgia. If I may interrupt the regular procedure, as it is so near the customary hour for the noon recess, I desire to offer a motion which, whether it is parliamentarily speaking a privileged motion, it is certainly a privilege for me to offer it.

In the course of human events a great many things happen which give us at the same time both pleasure and pain. This Association is confronted with such a situation this morning, and I want to offer a resolution which will not take more than a second of your consideration, and which I will ask the President-elect to put before the Convention:

Resolved, that this Association has learned with very real pleasure of the distinguished promotion of its retiring President, Honorable Robert R.

Prentis, to the Appellate Court Bench of Virginia, and because thereof tenders its warm congratulations to the state of Virginia and Judge Prentis.

Resolved, that with this tender of its felicitations the Association also expresses its extreme regret that the new public service to which our distinguished associate has been called will terminate his active membership in this body.

This Association trusts that Judge Prentis's approaching public service upon the bench will prove as pleasant to him as it confidently expects it to be useful to his State.

I offer that resolution.

Mr. ELMQUIST, of Minnesota. I am most happy to second that motion.

President THELEN. It gives me great pleasure to comply with the suggestion. Gentlemen, of the Convention, what is your pleasure regarding this resolution?

The resolution was unanimously agreed to.

President PRENTIS. Gentlemen of the Convention, no words come to me which seem to me appropriate. You know it is very difficult to express emotions. I have nothing but pleasant recollections of this Association and of its members, and of the warm friendships which I have among them. I have a mixed feeling of pain and gratification at my change in public service. It has, however, always been a cherished ambition of mine to serve in high judicial position; and while I do not think that the opportunities for service are any greater on the Supreme Court of Appeals of Virginia than they are on the State Corporation Commission of Virginia, I somehow feel that the work may suit my temperament a little better. At any rate, I have made the decision.

Every President of this Association has given me pleasant and desirable committee appointments. You have honored me by giving me the highest office in your gift, and I would be an ingrate indeed if I did not express my appreciation of all that has come to me in the past eight years in connection with the National Association of Railway Commissioners. I do express that appreciation, and wish I could express it more completely. (Applause.)

### CAR SHORTAGE.

Mr. FUNK, of Illinois. Mr. President in view of the fact that the Secretary has stated that the Committee on Car Service and Demurrage will not present a report, and in view of the suggestion of Mr. Aylesworth of Colorado. I move that the matter of car shortage be set down as a special order for 11 o'clock Thursday morning for discussion.

The motion was unanimously agreed to.

The PRESIDENT. This order is subject to a special order which has already been set. Of course it is in the control of the Association.

Mr. Thelen, I am going to surrender this gavel to you now, and I am fully assured, as the Association is, that you are going to maintain its dignity, and advance the progress of the Association in the next year. I congratulate you and the Association, that I leave it in such good hands. (Applause.)

President THELEN. If there is nothing further to come before the Convention at this time, we will take a recess until 2:30 this afternoon.

Whereupon, at 1 P. M., a recess was taken until 2:30 P. M.

### AFTER RECESS.

President THELEN. The Secretary has a telegram which he has been requested to read.

The Secretary read the following telegram:

"Chicago, November 15, 1916.

"Honorable Allison Mayfield,

C/o National Association of Railway Commissioners,

"Washington, D. C.

"National Live-stock Shippers League Meeting here yesterday unanimously endorse state control of railroad rates. I am directed to wire your organization that we stand squarely against federal control of state rates.

I. T. PRYOR."

The PRESIDENT. At the hour of adjournment we had under consideration the report of the Committee on Service of Public Utility Companies, of which Governor Yates is Chairman. If I am not mistaken the Convention had not taken any definite action in connection with that report. I believe Governor Yates had made a motion that the recommendations in the report be adopted. Was that motion seconded?

Mr. THOMPSON, of Illinois. I second it.

The PRESIDENT. The motion is before the Convention for discussion. Are you ready for the question?

The motion was agreed to.

### VALUATION.

The PRESIDENT. The next report on the list is the report of the Committee on Valuation, of which Mr. Elmquist of Minnesota is Chairman.

Mr. Elmquist read the report as follows:

## SCOPE OF THE COMMITTEE'S JURISDICTION.

When the Association met in convention in San Francisco in 1915, two committees had to do with the subject of railroad valuations; a standing committee on "Railroad Taxes, and Plans for Ascertaining Fair Valuation of Railroad Property," and a Physical Valuation Committee, which had to do with the special problems growing out of the federal appraisal of common carrier properties under the Valuation Act of March 1, 1913. At the San Francisco convention the Association recognized that the duties and work of its members had been extended by the process of transforming railroad commissions into public service commissions. Therefore the two valuation committees were in effect consolidated, and the present general committee on Valuation provided for, with duties relating both to railroads and public utilities. Ever since the present committee was named the federal appraisal has been in the critical formative stage, and therefore the work of the Committee has been entirely directed to the subject matter of the valuation of the property of the interstate carriers being made by the Interstate Commerce Commission.

## THE INTEREST OF THE STATE COMMISSIONS IN THE APPRAISAL.

For many years this Association urged Congress to undertake the appraisal of the railroads of the nation. Such an appraisal has been provided for under Congressional authority, and is now being made. At every convention of the Association since the appraisal began a sentiment has been strongly voiced for a more active participation by the state commissions in the valuation than there could be if they waited passively until the principal part of the work had been done. This sentiment grew out of a conviction as to the nature of the underlying duty of the state commissions, and an insight into the possibilities for evil which a perfunctory or ex parte appraisal might bring upon the states separately and as a collective national unit, based upon an experience in local railroad valuations which indicated that there was an imperative necessity for active representation on behalf of the public. Whether the duty of the state commissions is statutory or not, there is a practical and necessary call for them to interest themselves earnestly in the federal appraisal to perform the full service to their commonwealths which their constituents have the right to demand. This Association has taken it as self-evident that many important questions, with grave results and enormous sums involved, will go before the federal Commission without full statement of the claims of the general public interest unless the state commissions are heard. A number of these questions of fundamental principles have already been fully argued before the Commission by the members of this Committee and its representatives. This assumption is based on no spirit of hostility to the carriers, and manifests no

distrust of the industry, high ideals, and intelligence of the Interstate Commerce Commission or its employees. The state commissions have nothing to ask but that the facts be found, the whole facts, and nothing but the facts, and believe that nothing can be taken as an established fact which will not be strengthened as a finding if it first be successfully maintained as against critical analysis from opposing points of view. This analysis, if it is to be constructive, must be made while the work progresses, and before the results are in fixed form.

#### BASIS FOR THE INTEREST OF THE STATES AND THE STATE COMMISSIONS.

It is unnecessary to recapitulate the reasons which have been well stated at previous conventions of this Association on many occasions. The consensus of opinion is that in ultimate and legal effect, if not in nominal and immediate result, the federal valuation will be the touchstone whereby to test the lawfulness of all railroad rate systems, state or interstate. The states will be bound directly as to the whole fabric of interstate rates by which the state's commerce is governed, and will be bound indirectly as to the whole interwoven intrastate rate structure through the application of constitutional principles which have recently become familiar. The findings doubtless will be controlling in issues which are entirely beyond the present scope of the proceedings, and which cannot now be foreseen. The possible event of governmental acquisition of the instrumentalities of commerce suggests itself. It will be difficult for the commission of any state to convince its own constituents that the appraisal—made after the expenditure of millions of money and years of time, with all the authority of the national government behind it, after notice to the state and hearing of its objections—is wrong and the local commission holding different opinions is right.

That there will be a marked effect upon public service corporation finance goes without saying. Already certain of the carriers have evinced great timidity lest the tentative findings of valuation made by the Commission should become public property and should be "misunderstood" by the investing public, whereby the credit of the carriers should be needlessly impaired. On the other hand, a saturnalia in the market would follow the adoption of some of the claims of the carriers, and no one could object that the proceedings were not even in good taste.

When the principles applicable are determined they will largely control analogous cases with respect to other public utilities than those within the scope of the Act to Regulate Commerce, with which the state commissions have everything to do. The state commissions may therefore find too late that the valuation principles are effectually settled for them in all matters which relate to purely state commerce, and without their being heard except as they voice their views in the present proceedings.

## INSTRUCTIONS GIVEN THE VALUATION COMMITTEE.

The San Francisco convention took definite action for the continual representation of the states at Washington during the appraisal, but only after the subject had been brought before the Association and its various committees year after year, and the necessity had been so clearly shown that the vote was unanimous as to what should be done. Representation during the appraisal was so strongly deemed advisable at a conference held at Chicago in May, 1915, participated in by twelve state commissions, that by unanimous action a committee was appointed to consider the matter further, to arrange for funds, etc. A conference at Washington held later in the same month, having to do directly with the federal valuation, deepened the sentiment; and the fifteen states participating were again unanimous as to the necessity for representatives of the states being continually in touch with the situation at Washington, in order that the states might at all times be informed, and that their interests might be safeguarded. The extremely thorough organization developed by the carriers served to emphasize the need. The special committee of five reporting to the last convention of this Association on the federal appraisal most strongly urged this course, and stated that its recommendation was unanimously approved by the Executive Committee of the Association. A special committee of ten (nine of whom acted in the investigation) canvassed the situation carefully during the San Francisco convention, and its unanimous report was in favor of the establishment of representation in Washington. The proposition was then long and carefully debated before the convention, and as the result, the Association unanimously adopted the following resolution:

"That the several states should be represented by counsel at the hearings to be held before the Interstate Commerce Commission on questions relating to the valuation of railroads, and that the Committee on Valuation should be authorized to secure funds, employ counsel and other employees, if necessary, and to do any and all things which will enable the states to assist the Interstate Commerce Commission in reaching a fair and just conclusion in this most important matter. The counsel to be selected by the Valuation Committee shall be free to take such position on issues before the Commission as shall to him seem wise and just. No position taken by said counsel shall be interpreted or used as an estoppel on any member of this organization from taking such position as shall be deemed right by such member in any court or commission, state or federal, at this time or any future time. Each commission retains full authority to be represented in any and all hearings relative to the national appraisal, as it may desire, and to take any position on any issue which may seem right to said Commission."

About twenty states showed their earnestness of purpose by making definite pledges running for two years for the support of the work the Committee was directed to undertake: other states have since the convention made similar pledges; and others have expressed their good will and tendered their support.

## STEPS TAKEN BY THE COMMITTEE IN THE CARRYING OUT OF THE ASSOCIATION'S INSTRUCTIONS.

This Committee has obeyed the instructions given it by the deliberate and unanimous determination of the Association. It has been taken as settled that in the judgment of the state commissions they "have as vital an interest in the valuations now being made as the federal commission," (Report of Physical Valuation Committee, 1915 convention, proceedings, p. 385). The Committee has taken its grant of power as a mandate that the authority conferred should be exercised with vigor and a serious purpose; and to that end the members of this Committee have given their best thought and efforts. As will appear later in this report, they have held sessions aggregating several weeks of time, have participated in hearings before the Commission and the Division of Valuation, and have prepared briefs and arguments when the public interest required, and have employed counsel and now maintain representation in Washington for the purposes specified in the Association's instructions, to render assistance to the Interstate Commerce Commission and to the states, and to see that the rights of the states are safeguarded. The Committee's plans and expectations have been curtailed for financial reasons; and the Committee realizes fully there is opportunity for a greater service than it has been able to perform. Yet the Committee is convinced that the progress already made has fully justified the course the Association has followed.

## UNPREPAREDNESS OF MANY STATE COMMISSIONS.

Many state commissions, earnestly desirous of safeguarding the interests of their states, now find themselves without either the experience or the administrative machinery necessary to enable them to cope with the situation presented by the appraisals as they reach completion. In practice such commissions are excluded from effective participation in the appraisal, both by the brevity of the time for protest allowed by law and by the prohibitive expense and practical impossibility of organizing a corps of experts upon such short notice. These states must perforce practically let their interests in the federal appraisal go by default, except for such assistance as may be rendered in a spirit of comity by sister states acting through this Committee. The federal appraisal ought not to be permitted to go by default by any state; and the Committee, recognizing that fact, has tendered its good offices to every state commission in which valuations have been matured, and has rendered and will render all possible assistance to such state commissions as may desire or will receive it, in the way of advice as to matters of general policy or specific facts or principles. This tender is made to all the states alike, whether contributors to the support of the Committee or not. It is gratifying to be able to report that a spirit of cooperation has generally been found to exist;

and the fostering of this spirit and the putting of it into practical effect this Committee conceives to be one of its chief duties.

#### HEARINGS BEFORE THE COMMISSION.

When the present Committee was appointed, an extended hearing had already been held before the Commission on certain of the fundamental principles involved in the valuation proceedings, in which the carriers had been strongly represented and had filed a full and able written argument. Upon its appointment this Committee sought and obtained from the Commission the opportunity to be heard orally upon these fundamental questions, with leave for the states to file briefs. A preliminary conference of members of the Committee was held and preparations were made for the presentation of the issue from the standpoint of the states. A brief was prepared and filed by the Committee (credit for which is chiefly due to Commissioner Henshaw, of Oklahoma), and in addition, the commissions of the states of California, Kansas, Minnesota, and Oregon—all of which were represented on the Committee—filed briefs in their own behalf. On January 26 to 28, inclusive, oral arguments were held before the full Commission, upon the fundamentals in the appraisal. Arguments were made by members of the Committee, and by Hon. A. E. Helm, Commerce Counsel of the Kansas Commission, upon the following topics, generally stated:

Mr. Thelen: The construction of the Valuation Act, particularly with reference to the ascertainment of an ultimate sum as representing *the* value of the property; aids, gifts, grants and donations; and intangible values.

Mr. Helm: Ascertainment of original cost to date; and principles governing land values.

Mr. Niles: Meaning of the requirement for ascertainment of the cost of reproduction less depreciation.

Mr. Aitchison: Importance of ascertaining and stating investment in operating property constructed out of surplus earnings, depreciation reserves, etc.

Mr. Shaw: Treatment of solidification and adaptation in ascertainment of grading quantities.

Mr. Bristow: Construction of the Valuation Act, as to ascertainment of a final value.

Mr. Elmquist: Purpose of the Valuation Act; property to be included; and a rational and reasonable theory of reproduction new.

The argument was concluded, after answer by the carriers, by Mr. Thelen.

Copies of the various briefs filed and of the transcript of the proceedings before the Commission upon the oral argument were sent the various state commissions at the time, and further comment may be omitted.



The Committee has twice since the January hearing participated in conferences of a rather formal nature before the Division of Valuation. On May 26 the Division of Valuation submitted for consideration and criticism the reports of its Accounting, Engineering and Land Sections upon the properties of the Texas Midland Railroad. At this conference representatives of the Texas Commission appeared in its behalf, and Mr. Aitchison appeared as Solicitor for the Valuation Committee. On June 19 to 22, inclusive, conferences were held as to the reports of the various Sections of the Division of Valuation upon the Atlanta, Birmingham & Atlantic, the Norfolk Southern, and the Kansas City Southern systems. These conferences were participated in by representatives of the states of Virginia and Kansas, and by all members of the Valuation Committee who could attend. The importance of a full discussion of the results of the policy of the Division of Valuation as applied in these first cases is immediately apparent. As the carriers were strongly and numerously represented the frank, full, and somewhat informal discussion between their representatives, the state commissions, and the Division of Valuation at least developed the issues and demonstrated their importance.

#### ESTABLISHMENT OF BUREAU AT WASHINGTON.

It was the unanimous conclusion of the Committee, after the argument before the Commission in January, that it was unwise further to delay arranging for a continuous representation on behalf of the states at Washington during the appraisal. The subject was thoroughly canvassed; and in reaching this conclusion, the Committee was aided by the advice of a number of other members of the Association who were in attendance upon the argument. The proposition had the hearty encouragement of the Chairman of the Interstate Commerce Commission itself, and of the Director and members of the Advisory Board of the Division of Valuation. This Committee, therefore, deemed it to be its plain duty to provide such representation. The remaining members of the Committee decided to ask Mr. Aitchison, Chairman of the Oregon Commission, to leave his work in that state and to become the solicitor for the Committee and its Washington representative. The Committee's call was respected, and Mr. Aitchison retired from the Oregon Commission, and, since the establishment of the Washington bureau early in May, 1916, has devoted his entire time to the service of the state commissions in connection with federal valuation matters.

It happened that practically at the same time the Committee's representation was established at Washington, the Division of Valuation completed its work in the first series of valuations undertaken by it. Copies of the engineering, land and accounting reports (as far as they were completed) were transmitted to the interested state commissions and to the carriers, and made available to the

Valuation Committee. Conferences were called before the Director and Members of the Advisory and Engineering Boards, with respect to the reports, as has already been stated. As careful analyses were made of the reports as time would permit, and a number of conferences have been held between the Solicitor of the Committee and representatives of the state commissions interested, both in Washington and elsewhere. The Committee through its Solicitor has taken the lead in getting interested state commissions into conference, for the purpose of careful analysis of the valuation situation. A number of properties have been inspected with the state commissions and their engineers. Typical field notes prepared by the federal engineers have been checked and field parties visited to obtain first hand information as to the manner in which the work is being done. There have been daily discussions with officers or employees of the Commission concerning features of the work which affected the states, either in respect to matters of policy in respect to the appraisal, or as to administrative features of the undertaking calculated to make the work of the federal authorities more accessible and useful to the state commissions for their own particular and local purposes. A number of special studies have been undertaken as to various important subjects of general application, and a large amount of unit cost data has been assembled, supplied by the engineering departments of various commissions, which the Committee hopes to be able to amplify and coordinate, and then make available for the general use of the state commissions. The Washington Bureau has at all times kept each member of the Valuation Committee fully advised as to the status of the work and the various problems which have come up, and there has been full and free interchange of ideas so that the work of the Bureau and the wishes of the Committee have been entirely in harmony. Progress reports have been sent to the state commissions from time to time and special information supplied to the state commissions interested in special valuations under way or reaching completion.

#### FINANCES.

The Committee has received financial support from the Commissions of the following states:

California, Florida, Illinois, Kansas, Kentucky, Maine, Massachusetts, Minnesota, Nebraska, New Hampshire, New York (First District), Oklahoma, Oregon, Virginia, and West Virginia.

A number of other commissions expressed a desire to contribute to the support of the work of the Committee, but found that their local appropriation acts prevented them from aiding in the support of the Committee. Several commissions which found themselves in this position have indicated their intention to take the matter up with the legislatures in their respective states, so that specific authority may be given for aid to the work of this Committee.

It may be observed that the Committee does not differentiate in the service it is attempting to render, as between states which are contributors to its support and those which are not.

All funds of the Committee are expended only on warrants drawn by the Solicitor of the Committee, and approved by the Chairman; and a monthly audit of accounts is made. The financial records of the Committee are kept in duplicate, one set by the Chairman and the other by the Solicitor of the Committee, periodically balanced as against each other, and are at all times open to the inspection of any interested member of the Association. At the request of the Committee, the President of the Association designated Mr. E. E. Cone, statistician of the Corporation Commission of Virginia, to audit the accounts of the Committee and report to the Association. This audit has been made, and Mr. Cone's report will be submitted herewith.

Some states which desired to support the Committee's undertaking were unable to make a direct contribution of cash, but made arrangements whereby an employee of the Committee was taken on the Commission's payroll temporarily, or continuously at a small salary, and thereby the same result was achieved.

It may not be out of place to say that all expenses of the members of the state commissions serving the Committee by attendance upon hearings, etc., have been borne by their respective commissions, and have not been a charge upon any funds of the Association.

The foregoing outline, while brief, fairly covers the work of the Committee in carrying out its instructions from the Association. Acknowledgment should be made by the Committee of its appreciation of valued assistance rendered by Hon. A. E. Helm, Commerce Counsel of the Public Utilities Commission, State of Kansas, and by Mr. D. F. Jurgensen, Chief Engineer, Minnesota Railroad and Warehouse Commission.

#### ISSUES PRESENTED IN THE APPRAISAL.

The foregoing statement of the Committee's work may be supplemented by a statement of the more important issues raised in the appraisal. There have been no rulings by the Interstate Commerce Commission itself upon any of the important issues raised in the appraisal. The work done by the Division of Valuation in organization, in the field, in pricing, in accounting and historical search, has covered a wide territory, and has necessarily taken time. Now that the work of the Division is completed as to certain railroads, the Commission will soon have to pass upon controverted questions which have arisen, and its determinations will control the future work of the Commission's forces unless reversed by the courts.

An Association of state railway commissioners recognizes at once the tremendous importance of the issues at stake. The creation of this Committee, with the broad powers given it, shows that the members of this Association are fully aware of the gravity of the

the outcome of the valuation proceedings. The sums in dispute (laying aside values as to which no question could be raised) are the most huge which have ever been submitted to a civil tribunal for consideration: and even an admittedly low return on merely the disputed items involves sums so great that finite human intellect can form no just concept of them. If the extreme propositions claimed by the carriers are adopted, or even a considerable portion of them, not only will it hereafter be impossible for any legislative body, state or federal, to prescribe any lower schedule of rates than at present in force, but the rate schedules now charged, fixed by the carriers themselves, will be found to be confiscatory of their own property. The future of regulation itself as a solution of the transportation problems is intimately connected with the outcome of the federal appraisal: if the contentions of the carriers are accepted, regulation through legislation or by legislative authority will fail to regulate, and the quicker the railroad properties are then taken over by the government, the cheaper they will be acquired and the inevitable be satisfied. To assist in the endeavor to avert such an outcome is the high duty and privilege of this Association.

#### UNDUE HASTE IN APPRAISAL TO BE DEPRECATED.

It is evident that as the results of the railway appraisal are momentous in their possibilities for good or evil, the first principle is that the work should be done so thoroughly that no question will remain open as to its accuracy and justness, or else that there should be no appraisal at all. If the appraisal is to be made under financial pressure or against a time limit, the government and the railways will not be on even terms, and the advantages which come from unlimited means, powerful organization, and years of experience, will all be with the carriers. If the federal government is to achieve the desired result, neither time nor money necessary to the end should be stinted. The enormity of the task before the Commission may be judged from the fact that its program, if carried out, means as an average, the appraisal of one operating railroad corporation with two hundred miles of line and terminals in addition, every working day for five years. If Congress should withhold the full amount of necessary appropriation to insure the utmost thoroughness in work, or in effect hold a stop watch upon the undertaking, so that the Commission and its forces would be consciously working under the stress of haste to avoid Congressional censure, the results of the appraisal can not be accepted by the country as satisfactory. Such a mistake in policy is to be deprecated.

#### WHETHER A SINGLE VALUE TO BE DEDUCED A QUESTION OF PRIME IMPORTANCE.

The Committee regards of primary importance the question of construction of the Valuation Act, as to whether the Commission

is directed, after investigating the three costs and the history of each carrier, to deduce a single sum and to state the same as being *the* value of the property of the railroad, without reference to the purposes for which the appraisal was made, and without qualification of the term value. Such a construction of the Act has seemed to the Committee to be clearly negated by its terms; and to be contrary to the intention of Congress as expressed in debates and antecedent history of the movement for a physical valuation; and, if adopted would lead to inconclusive, misleading, and confused results. Inasmuch as the decisions of the Supreme Court as to valuation are still largely unsettled, and the Valuation Act does not contemplate that some important elements which must be taken into account in determining value in a rate case shall be investigated in the present proceedings; and because of the loose sense in which the elusive term "value" is commonly applied to different and repugnant ideas, this Committee has consistently opposed a construction of the Act contended for by the carriers, which would culminate in a single ultimate finding of *the* value of the property of the carrier, based upon the principles which would be applied in a condemnation case.

In the tentative valuations so far served by the Commission are to be found no ultimate finding of value, in the sense contended for by the carriers, but there are findings of the various elements of value, stated separately and in detail as in the act required.

#### ORIGINAL COST TO DATE.

The Valuation Act requires the Commission to "ascertain and report in detail as to each piece of property owned or used" by the various common carriers for common carrier purposes, "the original cost to date."

Regardless of the individual opinions of the members of this Association as to the controlling effect of Original Cost to Date in the determination of value for rate purposes, it is indisputable that it is an element which Congress and the Supreme Court have ever placed first in the enumeration of matters which are to be taken into account as criteria of value, and that the mandate to the Commission to ascertain the fact stands unqualified. Findings made under the provisions of the Act are incomplete in so far as they fail to ascertain and report this element of value.

It is not denied that difficulties often attend the ascertainment of this important fact; and that frequently records are absent so that the attempt of the accountant to state the item from books of account is futile. Again, the words Original Cost have been used carelessly and in more than one sense. But within the meaning of the Valuation Act, Original Cost to Date can be ascertained and reported within close limits of accuracy in substantially every case; either from books of account or other reliable corporate records which have withstood the scrutiny of an audit by governmental authority,

or by the cooperation of engineers and accountants, working backwards from the inventory of the present property to the prices applicable at the various times of construction, or by a combination of both methods. As an additional significant fact, a careful study and statement of the history and organization of the present and of any previous corporations operating the property, and the detail of the previous expenditures of money and the purposes for which expended; required by the Act to be investigated and reported, will develop the sacrifice of the present investors.

The Division of Valuation has stated that in all cases where the records are available and are apparently reliable it will ascertain and state from such records the total cost to date; that it can ascertain and state the total cost of equipment and lands in substantially every case. But it has not interpreted the word "ascertain" in the Valuation Act as requiring an estimate of Original Cost where records of accounts are not to be had or are unreliable. The contentions of this Committee have to that extent been denied by the Division of Valuation, and it will be necessary to press the point before the Commission. It is of interest to note that the Division has stated that generally speaking it is at least as practicable to estimate original cost in the manner described as it is for the engineers to estimate the present cost of reproduction—if anything, within smaller limits of error—and that the Division expects in substantially every case to develop the history of the investment of the present owners.

The case of Original Cost to Date is illustrative of the policy the Committee is endeavoring to follow in the interest of the members of this Association. Manifestly the Valuation Act should receive such a practical construction as will make its results of the greatest possible utility. This Committee does not believe that the present proceedings necessarily or at all involve the question as to the relative weight to be assigned the item of Original Cost to Date, when ascertained, as compared with the other elements of value required by the Act to be found. But it is patent that the Act does require the item of Original Cost to Date to be ascertained and reported; that the situation is such that the facts can never hereafter be as well ascertained as now; that the Commission is given such latitude as to the sources of its information that this cost can in all cases be estimated even if the precise sum be not susceptible of demonstration; and that all courts and commissions regard Original Cost to Date as significant or even of greatest weight. Whatever the views of the Interstate Commerce Commission may be as to the weight to be attached to the finding in a determination of the ultimate value for rate purposes, these considerations justify insistence that every reasonable present effort be made to ascertain and report this cost figure in order that the findings will be of the greatest use to state commissions, both now and in the future.

Examination of the Act will show that the Commission is given discretion to determine the detail in which it will report the financial

history of the carrier. This Committee has contended that the financial history is necessarily so interwoven with the item of original cost of intangible items for which value is claimed by the carriers, that it is desirable that the income, profit and loss, and general balance sheet accounts should be stated in the report in the most full available detail, and at periodical intervals in order that there may be an intelligent and full examination of the claims of the carriers under the head of development costs, foreborne fair return, and with respect to the investment of the proceeds of donations, bonuses, surplus earnings, and replacement or depreciation funds. Every state commission which has had a capitalized-deficit or development-cost statement presented to it by a public utility will appreciate the importance of conserving this information when (as is the case) the government's accountants have unexampled opportunities to study the whole financial history of the carrier and its predecessors. There have been so few reports submitted for examination by the Accounting Section (and none since the Committee's request was presented) that the future policy of the Division of Valuation in this regard cannot be stated. From the experience of regulatory officers who have had to apply valuations to practical purposes, the failure to preserve this evidence when it was obtained or could be had, would be inexplicable.

#### REQUIREMENTS OF THE ACT AS TO ASCERTAINMENT OF LAND VALUES.

In addition to the general requirements of the Valuation Act as to the ascertainment of the three costs as to each piece of property owned or used by the common carrier for its purposes as a common carrier the following specific duty is cast upon the Commission:

"Second. Such investigation and report shall state in detail and separately from improvements the original cost of all lands, rights of way, and terminals owned or used for the purposes of a common carrier, and ascertained as of the time of dedication to public use, and the present value of the same, and separately the original and present cost of condemnation and damages or of purchase in excess of such original cost or present value.

Third. Such investigation and report shall show separately the property held for purposes other than those of a common carrier, and the original cost and present value of the same, together with an analysis of the methods of valuation employed."

A requirement as to the ascertainment and reporting of pertinent facts with respect to aids, gifts, grants, and donations, will be discussed later herein.

#### REPRODUCTION COSTS OF LANDS.

The Act in terms requires the present cost of condemnation and damages or of purchase in excess of present value to be ascertained and stated—a requirement which the subsequent decision in the Minnesota Rate Cases demonstrated was incapable of a rational answer. The position taken by the Division of Valuation (which

is followed in the tentative reports served by the Commission) is that even Congress cannot require performance of the impossible, and therefore no speculation will be indulged in as to the condemnation or hold-up purchase costs, or damages. Here the Division finds itself in sharp conflict with the strongly urged claims of the carriers, who seem for the moment to have overlooked the Minnesota decision.

#### ORIGINAL COST OF LANDS.

It will be seen that the Act contemplates the ascertainment of the original cost of the operating and non-carrier lands, contrasted with the present value. Original cost is believed by the members of this Committee to be the strongly controlling factor in the ultimate determination as to the weight to be accorded land values in a rate case. Its views in this regard have been urged upon the Commission—views which perhaps more properly arise when determining the relative weight to be assigned different elements in a rate case than in the present proceedings. As to these contentions the Commission has expressed no opinion.

There are practical difficulties in many cases in determining the original cost of the present property, and contrasting it with present value. It is a laborious undertaking, which will require the expenditure of money to carry it through, and in some cases the requirement cannot be met at all. But as the disputed principles in land appraisals involve sums aggregating fully half the outstanding nominal capitalization of the entire railroad system of the nation, this Committee has urged that no obstacle not insuperable be permitted to prevent the most detailed and accurate statement of these important facts. The labor and expense involved are warranted by what is at stake. Nor are the difficulties real lions in the path.

Some of the items of overhead expense included in the original cost of lands are to be apportioned; some apportionments of original cost must be made when the consideration covers several tracts, or the tract conveyed has been divided for classification or other purposes, and evidence dehors the corporation's records may be necessary to supply the answer. It is not an answer to say that apportionments are necessary; modern accountancy and jurisprudence do not regard the difficulty of the apportionment of values as an excuse for failing to find the basis for a reasonable division of property when necessary for rate purposes (vide Minnesota Rate Cases). More difficult problems than this must be solved before the appraisal is done.

#### METHODS PURSUED BY THE DIVISION IN DETERMINING PRESENT VALUE OF LANDS.

The methods pursued by the Division of Valuation in determining the present value of lands used for the purposes of a common



carrier are well set out in the report upon the Norfolk Southern; which may be taken as typical:

"1. The appraisers, by the use of maps and personal inspection, became acquainted with the country traversed by the railroad generally, and with the lands of the carrier and the adjoining and adjacent similar lands, and made a general study of real estate conditions in the territory.

"2. An examination and study in detail was made of the carrier's lands and the adjoining and adjacent similar lands, and the non-carrier lands noted.

"3. A copy of the non-carrier list was submitted to the carrier for criticism, and the classification discussed with the carrier's representatives.

"4. Information from all available sources, official and private, including assessments, sales and opinions, was obtained.

"5. Zones of value were established and indicated on the maps.

"6. Final unit values of zones were determined. This value is the judgment of the appraisers, based upon investigation and consideration of all applicable elements of value.

"7. Areas of zones were ascertained by the computer and checked with original tracings, and are, in practically all instances, agreed upon with the carrier.

"8. The completed appraisal was checked and assembled, and rechecked.

"The following elements have been considered, and, wherever applicable, allowance made therefor: similarity, location, accessibility, utility, shape, size, corner influence, highway influence, grade, restrictions, physical conditions, transportation facilities, proximity to centres, character of soil, absorption, light, air and ventilation, and such other elements as suggested themselves at the time by the conditions peculiar to the particular location. Nothing has been added to the value of the railroad lands on account of special use as a continuous right of way, nor has anything been added or deducted because of the special use to which the carrier lands are now devoted.

"In ascertaining the value to be applied as a unit to the appraisers' zones of value, the fair market value of similar lands adjoining or adjacent to the carrier's lands was ascertained, and the unit of value of adjoining or adjacent similar lands constituted the values which were applied to the zones of the carrier's lands.

"Records of transfers, for the past few years, of similar adjoining and adjacent property were obtained. All available sales of land located within a reasonable distance were analyzed. Of these sales, those which reflected value in each zone have been reported on the field forms.

"The asking prices of adjacent or adjoining similar lands offered for sale were investigated and considered.

"In analyzing sales of property including improvements, the appraisers ascertained the value of the improvements and allowance was made therefor.

"Assessments of adjoining and adjacent similar lands were investigated and reported by the appraisers on the field forms, wherever found of value. The appraisers in analyzing assessments ascertained the general ratio of the assessments to the actual or market value of the land, and in arriving at their unit values were only influenced by the information gathered from assessments in proportion to their value as ascertained by analysis. These assessments varied, and the appraisers are of the opinion that in most instances the lack of uniformity and of the assessors' recognition of actual values in making assessments resulted in the assessments being of little aid, except in a few cases.

"Opinions were obtained from men whom the appraisers considered to be the best qualified by experience in buying and selling, or by knowledge of actual sales and by general knowledge of real estate conditions and values. In the instances where lands were valuable because of certain local conditions, or because of special adaptation to agricultural or other development, opinions were obtained from persons especially familiar with the natural and

general use and development of the properties under consideration. Expressions of opinion from these men were obtained as to unit values per square foot, or per acre, or, where the values expressed covered entire lots or farms, the appraisers either reported the value of such or reduced the same to units.

"The territory was divided into zones of value, and usually the zones were numbered consecutively for each county in a valuation section, beginning with No. 1. Street and highway crossings were zoned separately by the appraisers and these zones were given the same numbers as the zones crossed by the streets or highways, or the zones nearest the streets or highways. These highway zones are identified by the suffix "X".

"The same rule is applied to navigable waterways and streams, and the suffix "W" is used. The zones of land used for purposes other than those of a common carrier bear the same number as the adjoining or nearest carrier zone, followed by the letters "A", "B", "C", etc., according to the number of such parcels in each zone.

"The present market value per acre or square foot of adjoining or adjacent similar naked lands was ascertained and applied to the zones of the carrier's lands. As a general rule, city property is expressed in square foot units, and country right of way in per acre units. The units of value were determined by the appraisers and were placed upon the maps in each zone and recorded in the field forms."

It will be noticed that the present value of lands reported by the Land Section includes no allowances for expenditures for cost of acquisition, incidental or severance damages for the taking, or because the property is taken for railroad purposes and is a connected whole. No overhead expenses are built up on land values at any stage of the reproduction cost estimate. The original cost statements include such overheads, damages, etc., as were paid and are shown of record.

#### LAND CLASSIFICATIONS EMPLOYED.

The lands so valued are classified as follows:

- Class 1—Lands Owned, and Used by Owner for its Purposes as a Common Carrier.
- Class 2—Lands used by the Carrier, for its Purposes as Such, but Owned by some other party:
  - Class 2-1—Owned or leased by other common carriers.
  - Class 2-2—Owned by parties other than common carriers.
- Class 3—Lands owned or leased by carrier, but used exclusively by another carrier, or other carriers, for common carrier purposes:
  - Class 3-1—Lands owned.
  - Class 3-2—Lands leased.
- Class 4—Non-carrier lands owned, including value of improvements owned by carriers.

Lands acquired through aids, gifts, grants of right of way, or donations are included in the totals of each of the several classes above named; but the amount of such lands and the value thereof are separately stated. Excluded from each of the foregoing classes of property other than Class 2-2, are former streets, alleys and

highways used exclusively by the carrier; streets, alleys, and highways used jointly by the carrier and the public; and certain bodies of water crossed, and certain railroad crossings. These items are enumerated in the report.

Some sharp questions have arisen as to property classified as used for purposes other than those of a carrier, as certain roads have made sweeping claims that none of their lands were held for purposes other than those of a common carrier. Again, questions have arisen as to the inclusion of property used jointly. Certain carriers have urged that each joint user shall receive the full benefit of its occupancy—a proposal which involves an unwarrantable duplication of values. Other carriers have made claims for the inclusion of the values of the area in public highways longitudinally occupied by them, or allowances for the value of such rights.

If it be assumed that the present value of adjacent similar land is the present value contemplated by the Act to be ascertained and reported, the Committee has no fault to find with the general plan pursued by the Division. It is realized that after all, nothing is more uncertain than opinion evidence as to land values; that everything depends upon the industry, competency, and honesty of the individual land appraiser. Suggestions have been made by carriers that no figures be arrived at by the field appraisers until hearings have been had, or that the Division of Valuation abdicate its statutory function and arbitrate the land values with the carriers. Naturally the Committee opposed both suggestions. The state commissions can be of the utmost service in connection with this very uncertain question of land values, because of their familiarity with local conditions, their general knowledge of the subject, and their superior facilities for obtaining the facts as to the values of similar lands located in their own jurisdictions. Even the commissions which have no engineering staff and those which have done no appraisal work can co-operate with the Interstate Commission and render valuable service in this particular.

While the carriers have not accepted the basis of the Division of Valuation, and the claims of the carrier made after checking the appraisals by following substantially the same methods, and state results which differ so widely from those found by the Division that they are startling. For instance: In the case of the Norfolk Southern, the results announced by the Land Section of the Division of Valuation, and the claims of the carrier, made after checking the government's experts' figures, may thus be contrasted:

	Commission's Land Section's figures		Carrier's Claims	
	Acres	Present value	Acres	Present value
Class 1	9280.172	\$1,990,844.28	10,100.687	\$4,111,309.84
Class 2	2338.943	588,899.93	2,456.753	1,388,442.02
Class 4	2264.442	440,970.66	2,775.445	572,525.42
Total acres	13883.357		15,332.885	
Total value		\$3,020,714.87		\$6,072,277.28

This discrepancy is typical. In the case of Kansas City Southern, the carrier claims to have followed the precise methods employed by the Division of Valuation, and very largely to have gone to the same sources of information, and has built up a claim for present value of lands approximately three times that reported by the Land Section of the Division.

It requires little reflection to show the importance of a proper determination of this value. One railroad president is quoted as saying that on his system a difference of one cent a yard on the unit price of grading means fifty million dollars. Enormous as are the sums involved in differences of opinion as to unit prices on the physical elements of the railroad system other than land, when the differences as to land values of the character stated are projected over the whole country, contests as to a few cents on a unit price of ties or grading becomes merely the haggling over a pickayune.

The function of the state commissions is plain. The figures placed on land values by the Division of Valuation are, wholly or partly, either too high, too low, or neither too high nor too low. The state commissions can with reasonable readiness determine which is the case. If too low, the carriers may be depended upon to develop the fact. If too high, the state commissions should show that they are excessive. If correct, the state commissions should lend their support to the figures of the Division of Valuation as against any extreme claims of the carriers.

Difficult questions are certain to arise, important in their effect, which have not been indicated in the above statement. The valuation of land when no other similar land exists in the neighborhood, the appraisal of filled or overflowed lands, accretions, riparian and water rights, subsurface easements, mineral rights, suggest interesting problems the solutions of which are still indefinite.

#### AIDS, GIFTS, GRANTS OF RIGHT OF WAY, AND DONATIONS.

Among the facts which the Commission must ascertain and report and which the states believe to be of great importance, are the amount and value of any aid, gift, grant of right of way, or donation made to any common carrier or to any previous corporation operating its property, by the United States or by any state, county, or municipal government, or by individuals, associations, or corporations. Similarly the Commission is required to ascertain and report the grants of land by the United States, or by any state, county, or municipal government, the sum derived from the sale of any portion, and the value of the unsold portion when acquired and now. If any concession of allowance was made to the United States, or to any state, county, or municipal government in consideration of such aid, gift, grant or donation, the amount and value thereof is to be reported.

By Valuation Order No. 16, entered March 15, 1915, the Commission requires common carriers, whose property is being valued, to report the details of such aids, gifts, grants and donations. Parenthetically, the returns of this schedule have generally not been disconcertingly full or prompt.

The Division of Valuation has twice asked the state commissions as to what assistance they can give in securing the data as to aids, gifts, grants, etc., called for by the Valuation Act; and for suggestions for independent inquiries by the Valuation Division. It is apparent that the local authorities are in a position to see that the federal commission receives the full information which is necessary to permit it to make the return required by the Act of Congress. In fact, the state commissions in this regard would seem to be more advantageously situated than the federal government. Several commissions already have this data in their files; others can secure it by a search through state or local archives, or at least can put the Division of Valuation in touch with the proper local officers from whom the full and accurate information can be obtained.

It is a matter of common understanding among state commissions that in many cases, and almost universally in certain sections, the value of the aids, gifts, grants and donations equalled or exceeded the cost of the earlier constructed railroads. The importance of a full return as to these items is attested by the insistence with which the state commissions have always urged that they should be investigated and reported.

The difficulties which exist in many cases in determining the value of these aids, gifts, grants, and donations as of the time of acquisition is recognized by the Committee. It is easier to determine now the present value with fair accuracy than the value twenty to fifty years ago. On the other hand, the margin of possible error in estimation is smaller when the values were inconsiderable. The importance of the item as one of practical utility in a valuation for rate purposes warrants a demand that nothing short of an unsurmountable obstacle be permitted to block the Commission from making the findings in this regard which Congress has directed. Evidence of that character and degree of finality which we would prefer is not always to be had; but when evidence of such character is absent, the best evidence of which the case in its nature is susceptible must suffice, and ordinarily does permit the mind to find a fact to a moral certainty in matters of even the gravest concern.

#### ASCERTAINMENT OF REPRODUCTION COST NEW.

The methods pursued by the Division of Valuation in the estimation of the cost of reproduction new of the various properties owned and used for common carrier purposes are in the main the same which have been employed by various state commissions, and present no points of difference which call for extended comment. As

a preliminary, the carrier is required to furnish the Commission with complete maps and schedules of its real property, equipment, machinery and the like. Then a survey is made by the government engineers, generally in company with a pilot or representative of the carrier. Copies of the field notes are furnished the carrier and a time fixed for the objection on account of errors. In the case of certain large terminal properties the process is reversed, and the carrier's forces make the survey, in company with representatives of the Commission, and furnish the government's party with copies of the notes. From the field notes so prepared computations of quantities are prepared, and checked by the carrier at the time. The application of prices to the units thus computed is done by the government's engineers at the District office, independently from the carrier.

### THE INVENTORY.

Until the present time the differences between the carriers and the government as to unit quantities have been within the allowable limits of error. However, no state commission has yet completed a detailed verification of quantities, and this desirable check is absent. Certain of the state commissions have undertaken to check the inventories within their jurisdictions in their entirety; other commissions are verifying particular valuation sections by making precise surveys; and others will give each inventory as careful a check as inspection of the line, examination of available office data, and a knowledge of construction conditions will permit, short of actual resurvey.

In connection with the ascertainment of quantities in the field, this Committee has urged, and now repeats its recommendation, that whenever possible, the state commissions accompany the field parties of the government with competent engineers in the employ of the state, to the end that there may be no eventual possible suspicion of inaccuracy in this fundamental part of the work, and that the results obtained may be accepted by the states as accurate enough for all their own purposes. This recommendation involves no thought of lack of confidence in the skill and integrity of the representatives of the government in the field; and the suggestion made has the hearty approval of the Commission itself, and of all the responsible officials of the Division of Valuation. If the federal appraisal is to be of the utmost benefit to the states, it must be so made that when completed the state commissions can say to their constituents that as far as the inventory was concerned, they know it is right, because they followed it as it was made and are satisfied as to its accuracy. A state commission which omits the opportunity to follow the field work of the government as it progresses will doubtless find it has the burden to bear if it afterwards complains of irregularities and inaccuracies which timely observation and complaint would have corrected.

As the Committee has already advised the state commissions, opportunities for the states to observe the field work are already provided. By memorandum No. 138, November 30, 1914, the Director notified his Engineering Board that the Commission had approved instructions that the state commissions might be permitted to have engineers accompany surveying parties, take copies of the field work, etc., as the work progresses, provided it did not embarrass or add to the expense of the government's work. Memorandum No. 149 directs the various Engineering Sections to notify the state commissions whenever work is begun upon a railroad in that state: and that the state commissions shall have whatever reasonable access to the work, both in the field and in the office, can be given without impeding the work itself.

In order that results obtained by the federal government's and the state's engineers may be comparable, the instructions laid down by the Commission for the guidance of its field forces should be kept in mind. Copies of these have been transmitted by the Commission to the state commissions.

There are differences between the practices of the government's forces and the claims of the carriers in certain respects as to unit quantities which, while enormous in the aggregate, are overshadowed in the importance of their results by other contested issues. The cumulation of aggregated items of this description, however, with the addition of overheads which accompany them, and overheads built upon overheads, reaches a staggering height, and it is necessary their propriety be demonstrated. Reference is made to hidden quantities, allowances for subsidence, for shrinkage in grading and ballast (all of which have been generally agreed upon between the carrier and the government), to claims for adaptation and solidification resulting from the lapse of time and forces of nature, bank protection due to natural vegetation, and to claims for contingencies and inventory omissions, which have so far received little favorable consideration from the Division of Valuation.

#### CONSTRUCTION PROGRAM.

In early conferences between the Commission's officers, representatives of the carriers and of the states, the suggestion was thrown out by the railroads that the government and the carriers agree in each case upon a program to be assumed as a basis for the hypothetical reconstruction of the property. This suggestion was opposed by the states. The government forces have used their own discretion in mapping out a program assumed for the purpose of determining their reconstruction conditions, and in every instance so far the carriers have found fault with the assumption. The program assumed is of importance with respect to the items of interest and taxes during construction. It is a factor in the determination of the material, labor and transportation costs, and bears upon the estimate of a balance of earnings and expenses

from operation during construction. It has been the announced intention of the Division of Valuation to assume the shortest period which is consistent with economical construction, which ordinarily is short enough that any credit balance from operation during the construction period will be absent or negligible.

Because of their knowledge of local conditions and construction practices and facilities, the engineering forces of the state commissions should be peculiarly well qualified to test the tenability of the assumptions made by the Commission as to a reconstruction program. Such construction history as is available—both with respect to the particular carrier and other lines—should be studied and the results be made accessible to the government forces.

### UNIT PRICES.

The unit prices applied to the inventory quantities by the Engineering Section of the Division of Valuation have been assailed violently all along the line by the carriers. On the other part, certain state commissions interested in appraisals submitted for examination have taken exception to some unit prices as being manifestly excessive. Various claims for extras, etc., are in dispute. Some items, such as assessments for public improvements, have been disallowed *in toto* by the Commissioner's engineer, while contended for by the carriers.

Apparently the Commission has spared no pains to secure adequate information upon which to base its unit prices. By a series of orders it has directed the carriers to file with it returns showing important purchases, construction, etc., in detail which will permit proper analysis. A list of these valuation orders and of the schedules called for is set out in an appendix to this report. The returns to this series of orders are kept under the direction of the Division's Central Cost Bureau, at its general offices in Washington. A huge amount of other cost information has been collated from construction records, manufacturers' catalogues and discount sheets. The Central Cost Bureau is constantly making exhaustive studies for the general assistance of the District forces. Each District collates, independently of the Central Cost Bureau, cost information from the records of railroads under examination and others located in the same territory. In some cases the District engineers have made use of the cost data collected by the state commissions. The Accounting Section's work is co-ordinated with that of the Engineering Section in this regard. As might be expected, the facilities of the federal government for obtaining information of this character in a nation-wide survey are unexampled, and have been taken advantage of.

The independence of the Engineering Districts in determining prices has resulted in widely divergent methods of stating inventory quantities and unit prices, and inconsistencies and incongruities have appeared, when the work of one District is checked



as against another. The desirability of a standardization of methods of stating the quantities and applying unit prices is apparent to this Committee, at least, and doubtless standardization will grow with the progress of the work.

This valuable information ought to be, and doubtless can be, made of assistance to the interested states, not only in connection with appraisals of railroad properties, but in connection with the appraisal of public utility properties generally. The catalogue of articles which enter into the railroad systems of the country, and as to which information has been gathered and collated by the Division, is so comprehensive that scarcely any article used by a public utility of whatsoever description is omitted. One of the functions of this Committee is to assist members of this Association to take advantage of opportunities of this character, so far as the Division of Valuation may find it consistent with the public interest and the means of the Committee enable it to honor specific requests for such service.

A number of state commissions have either requested or directed the carriers (telegraph and telephone companies included) within their jurisdictions to file with them copies of all maps, profiles and schedules filed with the Interstate Commerce Commission pursuant to the various valuation orders of that body. Such state commissions have thereby acquired a large amount of live and useful cost data at an expenditure of time and money, kept at a minimum both for the carriers and the commissioners.

The unit price embraces three elements: material, labor and transportation. In the opinion of the Committee, all concerned have taken for granted in the past with respect to the transportation factor in unit costs; and further study is indicated before past assumptions should be perpetuated in the findings presently to be made. The Committee has this subject under consideration for the purpose of submitting its views as to such a study at the proper time.

### ENGINEERING.

The practice of the members of the Engineering Board in the various districts has differed as to the estimation of engineering as a part of the reproduction cost estimate. A uniform method of statement has been adopted whereby the estimate is stated in a percentage of the various Road Accounts, excluding Engineering itself, Land, Assessments for Public Improvements, Revenues and Operating Expenses during Construction, Cost of Road Purchased, Reconstruction of Road Purchased, and Unapplied Construction Material and Supplies. No engineering has been estimated on equipment accounts, other than may be carried in the unit price applied.

The carriers have made a general claim that the minimum engineering estimate should be 5% of the accounts named, and in

no case less than \$750 per mile. Certain railroads have broadened the claim by asking that land shall be included in the Road Accounts on which the percentage is based.

The state commissions should be in position to supply considerable valuable information upon this item, often in respect to the particular road under investigation, and generally as to other roads of similar character and construction characteristics in the same territory.

While the carriers are making the claims which have been noted, a number of the state commissions are prepared to controvert any allowance for engineering for purposes of reconnaissance and location; because the hypothesis of the obliteration of the present rail line, while leaving the adjacent geographical conditions intact, automatically amounts to a line location, so that no preliminary reconnaissance or location survey will be necessary. The claim of the carriers for an allowance of 5% at least, with a minimum of \$750 per mile, is evidently excessive in many cases; and should receive the careful attention of state commissions in territory where construction is reasonably light.

#### GENERAL EXPENDITURES.

As might be expected, there are some sharp differences between the claims of the carriers and the allowances made by the Engineering Section of the Division of Valuation. The large difference in Interest, and in Taxes during Construction growing out of the varying construction programs assumed have already been mentioned. On the other hand, certain items, such as Taxes during Construction, and Organization Expenses, are regarded by the Committee as very questionable in the shape in which they have been included in the reports so far submitted for examination. The proposal to base overhead expenditures upon land values, as well as upon the other road accounts and equipment expenditures, will be opposed as negated by the decision in the Minnesota Rate Cases.

#### DEDUCTION OF DEPRECIATION FROM REPRODUCTION COST.

Although the ascertainment of the cost of reproduction less depreciation is required by the plain terms of the Valuation Amendment, the carriers have at all times contended that as long as the property is maintained out of operating expenses at a standard which permits it to give unimpaired service, no depreciation exists which can be taken into account as a deduction from reproduction cost. The Committee has taken the position that the words "cost of reproduction less depreciation" were deliberately employed in the Act by Congress in the accepted meaning and signification recognized at the time by courts and commissions, and

that they require a consideration of the units of the property separately, and not merely as a combined whole.

The Engineering Board of the Division of Valuation has stated the principles it believes to be applicable in its memorandum to the Director, No. 226. A copy of this memorandum has been furnished by the Committee to each state commission, and the principles involved and detailed instructions for their application need not be repeated. The state commissions find themselves generally in substantial accord with the principles set out in the Memorandum; but reserve the right to suggest deviations in detailed application when the facts in particular cases require such course in the interest of accuracy.

Neither the states nor the carriers should have any real motive for unduly lengthening or shortening the lives of structures used as a basis for the depreciation computations. If too long a life is taken, the cost of reproduction less depreciation is increased, and if a return is based thereon, the return is increased over what it would be if a shorter life were taken and the cost of reproduction less depreciation was thereby made a smaller sum. On the other hand, the longer the life, the smaller the credit permitted as an operating charge for a replacement or depreciation annuity, and vice versa. A long life will mean a high reproduction cost less depreciation, a higher permissible rate of return, and a lesser amount which the carrier must lay aside before having a surplus out of which dividends can be met. The importance of a proper balance in the determination calls for the exercise of a sound judgment based upon an exhaustive study of the facts—a study which the federal government has apparently foreseen is necessary and has therefore made.

#### OTHER VALUES, AND ELEMENTS OF VALUE.

Thus far the report has had to do with costs which inhere in physical property. The Valuation Amendment, evidencing the desire of Congress that all of the facts which under any theory may be pertinent shall be assembled and perpetuated, requires the Commission to

“Ascertain and report separately other values, and elements of value, if any, of the property of such common carrier, and an analysis of the methods of valuation employed and of the reasons for any differences between any such values, and each of the foregoing cost values.”

Up to the present time the railroads appraised have been among the weaker lines, as to which it would tax the ingenuity to find any other value or element of value than those inhering in the physical property, and as to those lines the tentative valuations served by the Commission report that no evidence has been submitted as to any such values. These tentative valuations have not progressed to the stage where the parties have been heard formally, and therefore the issues are still indefinite.

The carriers have made a general claim that the appraisal is to be made along the same principles as if the property were being condemned, and therefore other values attach, either to specific pieces of property or units or parts of the property, or to the property as a whole. These latter values are defined by them substantially as follows:

Value of unity of use and connected operation: in that the separate articles of physical property constituting the railroad are joined together in a unity of use.

Going concern value: because the plant is in operation and has an established business in active and successful operation earning revenue.

Location value—traffic: representing the earning capacity of the property due to its favorable location with reference to command of traffic, including the existence of all the traffic producing industries located along the line of the carrier, the advantages of the railroad of connections with other carriers, the potential traffic in its tributary territory and all other features bearing upon its present and prospective traffic earning capacity.

Location value—operation: resulting from economy of operation due to gradient, alignment and other physical characteristics, climatic conditions, adequacy of terminals, equipment and other facilities, fuel supply, efficiency of operative organization, and all other features bearing upon the cost of operation and maintenance.

Franchise value: the right to exist and to operate.

Many other factors are suggested as undoubtedly contributing to the productiveness of the use of the property of a railroad, and which in due course the Commission will be asked to measure.

One of the railroads under examination has supplied the details which permit us to see where a lively imagination will lead, starting from the premises furnished by the carriers' committee. Including discounts on securities, the original cost of the railroad in question was stated by it as between fifty-five and fifty-six million dollars. Its "other values and elements of value" claimed, over and above physical property, are almost exactly twice the original cost of the physical properties and the discounts, or approximately \$110,000,000. Included in the claim as economic costs or other values are such items as the expenses of prior receiverships and reorganization, the cost of securing co-operation of the security holders antecedent to reorganization, the cost of abandoned property long since written off out of the earnings or as against surplus; the capitalized savings in expense because the road has facilities and traffic arrangements for the interchange of cars with connecting lines, and is not obliged to break bulk and transfer from car to car either at its terminals or at state lines. The usual development costs are brought up, based on shortage of a hypothetical fair return on these values, with compound interest on such shortages. This return and compound interest are also claimed as an element of value upon donations made by the public, upon betterments to the roadbed resulting from natural causes, and upon the

increment in the value of physical property which is due to advancing prices of labor and materials over actual cost.

#### PROCEDURE UNDER THE ACT.

At the date of this report tentative valuations have been served by the Commission in a few cases having to do with small roads or systems. The issues have not been made up by the filing of protests, and no hearings have been had before the Commission.

The Valuation Amendment does not require that the tentative valuations shall be served upon the state commissions; but at the request of this Committee the Interstate Commerce Commission has provided that tentative valuations will be served upon the state Commissions as well as the respective Governors in the affected territory, and that a copy will be delivered to the Solicitor for this Committee. No rules of procedure have been adopted by the Commission at the present time. It has been ruled in these initial cases that the thirty days for the filing of protests will begin to run from a future date named, which normally will be after service is completed. Time is short, and prompt action is necessary after the state commissions receive copies of the tentative reports if objectionable features are to be discovered and protests filed in due form and within the time limited.

The form in which the first tentative valuations appear has been made clear to each state commission by the Committee. It is important that as far as possible the tentative valuations shall be cast into such form that their findings will be self-contained, and may be used as a starting point for future continuations or supplementary appraisals, for the computation of depreciation annuities, apportionments of value, and the like.

No definite information is at hand as to the course of procedure to be followed upon the hearing of protests against the tentative valuations. When this information can be had in authentic form it will be supplied to the state commissions.

#### CONCLUSION.

It has not been the purpose of the Committee to foreclose the liberty of action of any state commissioner or commission in these valuation proceedings. Rather has the Committee attempted to safeguard public interests which have substantially unanimous support as settled policies, and to shape the appraisal as an administrative matter so that whatever results are reached by the federal authority may be upon principles which can be approved and expressed in a form useful to the states in dealing with their local problems as well as their interstate rights.

This Committee's work at the best can only supplement that

of the state commissions, each of which must bear its full share of the responsibility, and upon which must come the major burden of safeguarding the interests of the citizens of the respective states before the federal Commission. What this Committee can do is in furtherance of the work of the individual state commissions, and cannot be a substitute therefor. This Committee's service can be and should be extended more than its present means have permitted.

Enough has been said to show the gravity of the situation. The stakes at issue are beyond human comprehension. Responsible officers of one railroad (now in the hands of a receiver) have stated that the results of the appraisal will justify a valuation of its stock double its par amount and about five times its present market value. The functions of the state commissions in the emergency are obvious.

The Committee respectfully submits this report of its progress for the approval of the Association.

October 21, 1916.

CHARLES E. ELMQUIST, *Chairman*,  
JOSEPH L. BRISTOW,  
GEORGE A. HENSHAW,  
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## APPENDIX.

### REFERENCES TO IMPORTANT VALUATION ORDERS OF THE INTERSTATE COMMERCE COMMISSION, REQUIRING INFORMATION FROM COMMON CARRIERS.

Valuation Order 1 (the so-called "Map Order"), modified and supplemented by Valuation Orders 5 and 6. Provides specifications for maps and profiles of railroad lines, which govern maps and profiles filed with the Commission.

Valuation Order 2, as modified by Order 10. Requires the filing of schedules of abandoned property, showing original cost, date of abandonment, and disposition and present status of the property.

Valuation Order 3. Providing that records shall be kept and reports shall be made to the Commission as to all extensions, improvements or other changes in the physical property of every common carrier after June 30, 1914, classified by states, and showing in detail units and quantities of material and labor.

Valuation Order 4. Requires an annual inventory of material and supplies to be made and kept.

Valuation Order 7. Requires the filing of schedules of land, showing original cost, and classifying as held for carrier purposes or purposes other than those of a common carrier.

- Valuation Order 8. Requiring the recording and reporting of a register of equipment (rolling and floating, work, and shop and other machinery), showing original cost to date.
- Valuation Order 11. Requires the filing of inventories of corporate records, documents and papers, showing location and custodian.
- Valuation Order 12. Schedules of industry tracks to be filed.
- Valuation Order 13. Requires the making and filing of schedules and inventories of quantities, units, and classes or kinds of property in roadway or track, bridges, buildings and all other structures, signals, interlockers, telegraph and telephone lines, electrical apparatus, and any and all fixed physical property except lands and equipment, which are covered by Valuation Orders 7 and 8, *supra*.
- Valuation Order 14. Schedules to be filed showing important purchases made and net prices paid by steam railroads for material of a large number of enumerated classes, and also rates of compensation for labor.
- Valuation Order 15. Requires schedules pertaining to privileges given and leases made by steam railroads.
- Valuation Order 16. Requires schedules of all aids, gifts, grants and donations, and other data called for in paragraph of Valuation Act marked "fifth."
- Valuation Order 17. Schedules required for telegraph companies showing important purchases made and net prices paid for material of a large number of classes of property, also rates of compensation paid for labor.
- Valuation Order 18. Similar in scope to Valuation Order 17, applicable to Class A and B telephone companies.
- Valuation Order 19. Requires schedules to be filed by steam railroads showing important purchases of material, net prices paid, and rates of compensation for labor, pertaining to telegraph and telephone property.
- Valuation Order 20. Requires statements showing the corporate history of the common carrier appraised and its predecessors, and the chain of title.

Mr. ELMQUIST, of Minnesota. Mr. Edwards desires to have a communication read in connection with the report of the Committee. He was required to absent himself at 3 o'clock, therefore I take the liberty of reading it. I do not know what is in the document, but I shall read it.

"I beg to be allowed to take the time of this Association for a moment to describe a movement now under way in several of the national business associations, and in the underwriting societies. I refer to a movement looking to the preparation of a glossary of terms used in valuation work. As this work has proceeded, the most surprising differences have developed of the meaning of terms in common daily use. Such terms as 'investment,' 'value,' 'worth,' 'reserves,' 'reserve funds,' 'public utilities,' have elicited definitions from individuals which differ materially in the conceptions which the said individuals have when using these terms. The work has progressed sufficiently to warrant the statement that much of the misunderstanding existing in connection with 'appraisals' is due to a lack of agreement as to the meaning of the various terms as used.

"The purpose of those interested in the preparation of a glossary is to insure that every concept in connection with valuation work shall be represented by a definite term, and that when that particular term is used it shall convey that concept and no other.

"The purpose of this statement is to enlist the interest of this Association in the preparation of such a glossary, and if possible to secure its co-operation in the production of what is evidently a much needed work. While many may differ as to the methods and principles which should prevail in the valuation of the property of a public service corporation, all I am sure will

agree that these differences are more apt to be rightly settled if all interested are at least speaking the same language.

"I hope that this brief and inadequate statement of the pending movement may prove of interest to this Association. If this should prove to be the fact, I shall be more than glad to pursue the matter further in any direction which you may care to indicate."

The PRESIDENT. What action does the Convention desire to take with reference to the letter just read? It might just as well dispose of that before taking up the report.

Mr. BRISTOW, of Kansas. I move that it be filed.

The motion was agreed to.

The PRESIDENT. Senator Bristow, did your motion contemplate that this letter be printed?

Mr. BRISTOW, of Kansas. I think not. It is simply a communication on a matter which in my opinion we cannot deal with.

Secretary CONNOLLY. The gentleman referred to by the Chairman of the Valuation Committee is Mr. Edwards, who represents the National Electric Light Association, as a member of a committee of three from the Accounting Section of that Association. They are entitled to representation here.

Mr. BRISTOW, of Kansas. As I understood the communication, he desires a glossary to determine the meaning of words, and that such glossary shall be approved, and that such meaning as is placed upon those words in that glossary shall be the meaning applied as they are used in this valuation act. I think it is utterly impracticable to do it, and I have moved that the communication be received and filed, because we could not determine that one man should say what a word means. There are a great many people who have different views as to the meaning of words when used in relation to one another.

Mr. AITCHISON, of Oregon. I suggest that the letter be referred to the Valuation Committee.

Mr. ELMQUIST, of Minnesota. I was just going to make that motion.

The PRESIDENT. Without going through the formality of putting that motion, by unanimous consent the suggestion of Mr. Aitchison will be carried out, if there is no objection.

I believe, Mr. Elmquist, you made a motion that the report of the Committee be adopted. Is there a second to that motion?

The motion was seconded.

The PRESIDENT. The report of the Valuation Committee is now before the Convention for discussion.

Mr. AITCHISON, of Oregon. I see in this room an honorary member of this Association, the Director of Valuation, Mr. Prouty, and it occurs to me that it would be a fitting honor to one whom we respect highly if the President of this Association should invite the Director to make any remarks that he may think apropos at the present time in connection with this great



question. I move that Director Prouty be invited to address the Association. (Applause.)

Mr. PROUTY. Before that motion is put, let me say that when I began this valuation work I did considerable talking; but I have gotten to the point now where I keep still unless I am obliged to say something. I did not come here this afternoon because I had anything which I wanted to say to the Convention, but simply to answer any questions which might be necessary.

The PRESIDENT. Gentlemen, you have heard Mr. Aitchison's motion. Is there a second to that motion?

The motion was seconded and agreed to.

The PRESIDENT. Director Prouty, we shall very much appreciate a few remarks from you in connection with the valuation work.

Mr. PROUTY. I am very much obliged, but I do not believe I have anything to say that would be of the slightest interest to this audience. We have been going on for the last year in about the usual way. We have covered about sixty thousand miles. We expect to get through on schedule time, if the courts and the railroads and the state commissions will let us alone. (Laughter.) That is about all I can say. If any question is asked, I shall be glad to answer it, but I do not believe there is anything which I could say that would be of interest to the Convention.

Mr. AITCHISON. It will not be at all out of place for me at this particular time to say something which has not been included in the report of the Committee, and that is that the members of the Committee fully appreciate the courtesy which has been uniformly shown us, and the very frank way in which the Director, and the other officers of the Division of Valuation, and the officers of the Commission itself, have at all times and places dealt with us on these questions. I feel that this statement should be made publicly, and that it is due to the gentlemen who have met us in this very open and unreserved manner. I want to say, for the remaining members of the Committee, that the other members of the Association do not doubtless understand the enormous amount of detail work and responsible work which has fallen upon the shoulders of the Chairman of this Committee, Mr. Elmquist; and speaking for the other members of the Committee I want to say that we, and the Association, are greatly indebted to him for the way in which he has labored in and out of season in the service of this Committee, thanklessly heaping up for the future, I have no doubt, a choice assortment of burdens for himself; and I trust that the Association will bear in mind what he has done. (Applause.)

The PRESIDENT. As a member of the Valuation Committee, I want heartily to second everything Mr. Aitchison has said about Mr. Elmquist. He has written me numerous letters asking me to do things, and every time I got a letter I thanked him for it, because I knew we had a Chairman who was on the job. I

feel that we will all consider this report to be one of the most important that will be presented to this Convention. There are quite a number of matters in connection with the report which possibly it would be well to discuss. I have in mind among other things the question of further financial support. Is it not your judgment, Mr. Elmquist, that it may be desirable to give consideration to that question?

Mr. ELMQUIST, of Minnesota. Unquestionably that must be considered by this Convention, but I prefer to do that tomorrow, after I have had some further talk with the members of my committee. While I am on my feet, I want to thank Brother Aitchison and Brother Thelen for the kind words they have said about me, but I want to assure them, and all of you, that no Chairman ever had the assistance of more active and willing workers than I have had during the past year. Every member of the Committee, without exception, has done everything I have asked him to do, and the work of the Committee has not been the work of the Chairman, but of the men who have been appointed to work with him. (Applause.)

The PRESIDENT. Does any one desire to discuss the report, or would you suggest that we defer further discussion until to-morrow?

Mr. ELMQUIST. If any one wishes to discuss the report, of course it is open for discussion.

The PRESIDENT. Apparently everybody is so well satisfied with the work of your Committee that there is nothing to say. Do you desire to ask for a special order tomorrow in connection with the financial end of this report, or to take it up in its course?

Mr. ELMQUIST. To take it up in its course.

The PRESIDENT. The motion before the Convention is the approval of the report of the Valuation Committee. If there is no further discussion at this time, all in favor of that motion will signify it by saying aye, those opposed no.

The motion was unanimously agreed to.

## CAPITALIZATION AND INTERCORPORATE RELATIONS.

The PRESIDENT. The next committee on the list is the Committee on Capitalization and Intercorporate Relations, of which Commissioner Edgerton of California is Chairman.

Mr. EDGERTON, of California. I became Chairman of the Committee, succeeding Mr. Aitchison, about the middle of the year. The report was prepared and sent to each member of the Committee, with the following results: These members have agreed to the report unconditionally, John F. Shaughnessy, William C. Bliss, Paul B. Trammell and myself. One member of the Committee was dead, and the communication did not reach him. Mr.

Clyde B. Aitchison concurs in part, and joins in the purpose of bringing the report before the Convention. Honorable Judson C. Clements of the Interstate Commerce Commission states "I concur in the recommendation for federal control of the issuance of railroad securities."

Just a brief statement preceding the reading of the report. To those who may consider that the Committee has gone somewhat outside of its sphere in discussing the subject of capitalization, I only want to suggest that capitalization rests upon the entire public facilities of the country. As you influence the foundation, so you will influence the superstructure. There is considerable discussion here of those matters which affect capitalization, and a presentation of the various views with regard to it. Some deductions and conclusions are made, and some specific recommendations are indulged in. These are numbered. The Convention may adopt all of them, some of them, or none of them, as it sees fit.

The report is as follows:

Your committee believes that it is desirable in reporting upon this matter first to survey the action heretofore taken by the Association on the issues before us and then to present our views and recommendations as to such further course we may believe it wise for this Association to pursue.

The subject matter of capitalization and the best thought of the country, including the views of the state commissions, Interstate Commerce Commission and of special investigating committees were so ably presented in a report to your Association in October, 1913, that we preface what we may have to say with a reference to that document.

The summary of that report, which proposed that the Interstate Commerce Commission be given authority to regulate the stocks and bonds of interstate railroads, was contained in these recommendations of the committee:

"We do not believe it necessary, however, for the purposes of this paper to recommend any particular form of an act but we do believe that we should recommend the minimum which should be provided and this minimum we believe should be the following:

- "1. The limitation in the act of the purposes for which the issue of stocks and bonds shall be permitted.
- "2. Authority to the commissions to see to it that the proceeds of the sales of stock and bonds are devoted to the purposes for which they are issued.
- "3. No stocks or bonds to be issued without the positive approval of the commission, or at least a veto power should be reposed in the commission similar to the power which the Interstate Commerce Commission has to suspend rates. If this method is pursued, the same full investigation should be required on the part of the commission in every instance as is required when the affirmative action of the commission is provided for.

- "4. No limitation in the statute as to the amount for which either stocks or bonds shall be sold.
- "5. The power should be reposed in the commission to impose conditions and to grant the application of the utility either in accordance with such application or in lesser or greater amount, and to impose such other conditions as the commission shall deem necessary.
- "6. Regulation of the stocks and bonds of interstate common carriers to be delegated to the Interstate Commerce Commission.

"Basing our recommendation upon the foregoing conclusion, your Committee respectfully recommends

"That Congress immediately pass an act empowering the Interstate Commerce Commission to regulate the stocks and bonds of interstate carriers in the manner and to the extent hereinbefore outlined."

Your Association, after an illuminating debate upon this report, adopted five of the six recommendations, declining to lend its endorsement to recommendation No. 4, which provided that no limitation should be placed in the statute as to the amount for which either stocks or bonds should be sold.

The subject again came before your Association in concrete form at your annual convention in San Francisco in October, 1915. At that meeting the Executive Committee presented, and your Association adopted the following resolution:

"RESOLVED: That it is the judgment of the National Association of Railway Commissioners that supervision and control by the States of the issuance of stocks, bonds, notes and other evidences of indebtedness of common carriers by rail should be preserved; but that such regulation may be properly supplemented in the public interest by a federal statute carefully framed to apply effective regulation along already tested lines; and that, therefore, the issuance of stocks, bonds, notes and other evidences of indebtedness by common carriers operating railroads constructed across state lines may properly be made subject by Congress, if within its powers, to effective regulation by the Interstate Commerce Commission or by a special tribunal created for the purpose as may be deemed necessary, such regulation to be made in addition to and not be designed to oust the State authority."

Your Association has therefore twice recommended that a Federal agency be empowered to regulate the stock and bond issues of the interstate carriers.

Your later resolution, we take it, indicates a determination that any grant of Federal authority shall not be in such terms as to still leave a twilight zone between national and state authority. For this reason it is of course essential that there be no complete waiver of the present state authority. Federal authority would naturally acquire such jurisdiction as has not now and can not be legally conferred upon the several states. It would, in addition, we assume, under the meaning of your resolution of 1915, acquire such authority over interstate capitalization as the several states may now be lawfully exercising.

These recommendations by your Association have run parallel with similar observations by the Interstate Commerce Commis-

sion. The reports of this Commission have consistently urged, with emphasis and detailed argument, Federal control of interstate capitalization. The last report of the Interstate Commerce Commission, for the period 1915, repeats the recommendations it has consistently placed before Congress.

We think it profitable to direct your attention again to the expressions of members of the Interstate Commerce Commission. Commissioner Clements, in a particularly clear exposition addressed your delegates last year in these words:

"On this particular question, as you stated a moment ago, the convention in past years, I think at least twice and perhaps three times, has indorsed the idea of controlling capitalization by some authority. Each time the matter has been discussed there has been a difference of opinion as to whether the recommendation should be that that should be done wholly by the Interstate Commerce Commission or done by the states. I have always felt that everything that can be done by the states as effectively as otherwise, should be done by the states. However, I have been led to believe that it will be a long time before you will get the forty-eight states to act in such harmony and with such effectiveness as to accomplish the necessary object in properly limiting and regulating the issuance of stocks and bonds. I am still doubtful about that. I know that there has been a time in the past when the corporations would flock to certain states far away to get their charters, because it was easy to get one, or only had to go to a court and make their application and write into it authority to do almost anything, engage in industrial, as well as in the railroad, business, and all sorts of things. And so I have myself been led to almost a concrete conviction that it will be a long time before there can be any effective regulation that will be sufficiently adequate and uniform throughout all the states, where we have this practice of comity, of going from one state to another; and therefore, that ultimately we will all come to the conclusion that it must be done by some one authority. I am not asking that it be done by the Interstate Commerce Commission, because it has some few little things to do besides that; and unless there can be some way arranged whereby the Commission can take care of all of the added things that are put upon it from time to time, it will be impracticable to take on more important matters. However, I think it will have to be done by some one tribunal in an adequate and uniform way, and not in a way that will place any such extreme rigidity over the control of capitalization as to hamper and make impracticable the issuance of stocks and bonds and notes for real and necessary purposes without too much delay and restraint, so as not to impede necessary work which must be promoted.

"But it seems incredible that we can go on many years still leaving it lawful, in the sense that there is no statute against it, to permit a company to do the things that they have done. It is idle to say that they are getting better all the time, and that these things will stop in response to public opinion. Public opinion on these questions has greatly improved. Time was when very respectable men, men who wanted to be regarded as respectable, have considered that they were not losing the respect of the public if they only did things which the law did not forbid. Now, the law ought to forbid some of these things whereby property is seized upon by selfish managements for private gain—the issuance of stocks and bonds for other than legitimate transportation purposes; of paper to be exploited all over the world, in other countries as well as here. There ought to be some limitation, a veto power somewhere, so as to make these things impossible and to bring personal guilt to those who indulge in them. But heretofore in these conventions there has been a sentiment that it ought to be left to the state, and while some have thought it should be controlled

by the Federal Government. As already stated, for my own part, I would rather see it left to the states, if it would be done. But I do not see much encouragement that it would be done soon or adequately, for the reason that it falls on the same plane that a thing that is everybody's, is nobody's business, while one state will have a vigorous law, it is not protected from the action or laxity or want of action by its neighboring state. A road may run through ten or a dozen states, and there is great complication and difficulty about effective regulation of these matters. I think it will finally have to be undertaken by some single authority. In saying that, I am not influenced by any desire on the part of the Interstate Commerce Commission to have the job, but these are my convictions from observation and experience. It is idle to dwell upon the necessity for it, it seems to me, in view of the investigating and disclosures in connection with transactions which would have been impossible if there had been some restraint on the issuance of stocks and bonds for illegitimate and speculative purposes and mere exploitation of property.

"When such things are done they are always done in connection with a road that is apparently strong, and after they are done that road is left in the ditch, without credit; it takes years for it to build itself up again. In the mean time it is demanding help from the public in the way of adequate rates that will enable it to obtain and restore credit; and while everybody must admit the principle of justice that the carriers are entitled to the opportunity to earn enough to keep going and allow for reasonable profit on actual investment and value, it is preposterous that the public should be expected to make good all of the securities issued for these illegitimate and scandalous purposes. And after they are issued and the mortgage is placed upon the property, the time will come when the carrier will be headed towards hands of a receiver. Then there is a clamor for higher rates in order to secure more revenue and avoid a receivership, which simply means, if the present condition remains, that you must either give a deaf ear to these demands of the carrier and its stockholders of things strenuously championed by a portion of the press, and permit the property to pass into a receiver's hands; or otherwise overlook the causes which brought on this result, and permit the exaction of rates that cannot be justified as reasonable for the service performed, in order to bolster up the mismanaged road.

"We are told that when a road goes into bankruptcy by such methods the public must cooperate; the public needs its services, and in order to secure safety and adequate service, you must encourage it and give it rates that will give it credit. Credit has been taken away and destroyed by these exploitations. Now, we must be ready to do either one thing or the other—make good all these paper securities for whatever purpose they were issued, or be warned, constantly warned, that the income from rates is insufficient, inadequate to give and render the service we expect of it; or else you must give the authority somewhere to veto these things and prevent them before they are done. I do not want to offer any proposition that this convention recommended that Congress enact suitable legislation for the Interstate Commerce Commission to do this work. I do think, however, that the Commissions ought to keep going on record that there ought to be adequate legislation conferring authority on some tribunal to accomplish this purpose, to a reasonable extent."

Judge Clements offered concrete specifications which we quote:

"A few years ago, when the Alton road was taken over by four men obtaining more than fifty per cent of the stock, and it was reorganized, its capitalization was increased from about thirty-nine million to one hundred and fourteen million, but little being added to the property. But what was the result? The road was burdened with a debt, burdened with bonds which under the law are a legal obligation, irrespective of the uses made

of the money obtained. It turned out in the investigation made by the Commission, after it had all happened, that ten million of these bonds were in the hands of one of the great insurance companies of New York as an investment, for the investment of the funds to make good their policies to the widows and orphans, of whom we hear very much sometimes, when it is sought to increase rates.

"There is the history in record of the New York, New Haven & Hartford, the Rock Island, the Frisco.

"I remember a few years ago, after the Alton matter had been disclosed, I was at Boston discussing several propositions concerning amendments to the law, one of which was valuation, one that of authorizing the Commission to originate investigations, with power to make orders and fix rates, another was the suspension and investigation of proposed increased rates, and the last was that of control of capitalization. A distinguished professor of Harvard was present and he was called upon to state his views on some of these questions; and expressing approval of reasonable public control of the matters, he said in substance that he had recently talked with a business man in New York, concerning the question, who was opposed to such control by the government; that this gentleman, upon having his attention called to the Alton transaction, replied that this was 'simply a d—d steal.' To my mind the meaning of this retort was that it need not be apprehended that a transaction of this sort would be repeated. We are now told that the uplifted moral sentiment of the present day, aided by publicity, will be sufficient guaranty against such abuses in the future.

"There have been too many recent affairs of like and indefensible character disclosed to justify reliance upon anything short of the strength of law. Why, if public sentiment would stop these things entirely, and you could depend upon moral precept, we would not need any laws except the Ten Commandments."

Finally, Commissioner Clements had this to say before your body at its last gathering:

"What can be more obvious than the necessity for public limitation on the issuance of stocks and bonds, to the end that the public, who pays the rates out of which the bonds, principal and interest, must be taken care of, may not be made to pay on those except as they are issued in good faith for the business of carriage, of transportation? It is idle to say that it is no matter how much the railroad companies bond their properties, since, under the law, the bond can be foreclosed and the property can be put in the hands of a receiver. The people who have invested in the securities can be left high and dry like the people who invested in the holding companies of the Rock Island, dividends paid for a time in order to make attractive paper resting alone on earnings to be obtained from the public in rates. Good faith towards the public demands that there should be regulation of the issuance of securities. The good name of American business demands that the investors the world over shall not be induced, by these exploiting propositions, through holding companies or other devices, to invest in paper that means nothing, or, if it means anything, means the people who pay the rates must make it good regardless of the purpose for which it is issued or what has been done with the proceeds. One or the other must happen; they must finally go and fall to nothing, having no value or source by which they can be made good; or else you must yield to the contention that whenever there is need of more revenue, rates must be raised in order to bring the money in order to make them good. One or the other is true. You regulate national banks for the protection of the public, the depositor; you make personal guilt there for malfeasance in office, and you have inspectors to see what they do. Transactions of the character to which I refer, by which railroads have loaded

down their properties and have diverted the proceeds into their private pockets, as they have done in some cases, have no parallel within my knowledge in any business in which the public has had an interest since the day of wildcat banks. The time is ripe, to go to the extent of exercising a veto of unnecessary extension of capitalization. Only do that which experience has demonstrated to be necessary. I am not an advocate of reckless experimental legislation, without the guide of experience. This matter stands out and demands attention, demands regulation. It has been said that, if the government control the issuance of bonds and stocks, and they be approved then, by inference or implication, the government itself will, in the public esteem, be held morally responsible for these bonds and be morally bound to make them good. I think that is beyond all reason, to assume that any such obligation as that will be inferred. If there should be any apprehension, to make sure that there should arise no such inference as that, the authority could be conferred upon some tribunal to veto the issuance of stocks and bonds not justified, without affirmative approval of those not vetoed. What is needed is to prevent the putting out of these securities for purposes other than *bona fide* railroading and taking the proceeds to promote speculative purposes by a few of the management who get control of these properties. They never seize a weak property that is tottering on the brink of bankruptcy, because that would not support their scheme; they could not use it. It is the fine property, it is that which has a reputation, it is that whose stock perhaps is selling at two hundred dollars a share and the like of that—like the Alton road, and like the Rock Island, and like others. They are the ones that are seized upon by those who can get control of the majority of the stock, and then the interest of the minority, as well as the interest of the patrons of the road, are not protected.

"This legislation is needed for the protecting of roads that are managed uprightly and properly, because, whenever one of these crashes come and the stocks are held the world over, all of the good roads of this country suffer to a greater or less degree, not only in foreign countries, but in this country. For because it is impossible for every individual to discriminate between a good American road and a bad one, the taint goes to all of them in the minds of the public, who have no specific information, and they feel whatever has been done to one can be done to another. Therefore, it goes to impair the credit of all. The legislation is needed for the protection of the good roads, properly managed, and for the ratepaying public of this country, and for the investors in the country and in other countries."

The viewpoint of Commissioner McChord, Chairman of the Interstate Commerce Commission in 1915, was presented to the Convention in his telegram in which he said:

"The specific questions requiring immediate attention are those with respect to legislation covering the issuance of railroad stocks and bonds, the prevention of irregularities and covert financial operations between railroads and holding or subsidiary companies, the punishment of financial wreckers of railroads, the physical valuation of railroads, the development of foreign commerce, the uniform classification of rates, and the furtherance of the safety first movement inaugurated by the railroads of the country and their employees."

Commissioner McChord, it will be noted, placed legislation covering the issue of stocks and bonds at the head of his list of subjects requiring immediate attention.

We have quoted at length from the statements of Commissioner Clements because he has summarized in most persuasive



form those arguments which we believe must lead to the enactment of the desired Federal legislation.

Federal control of interstate railway capitalization became an issue before Congress in 1914 and after a very earnest consideration the measure then proposed failed of adoption. The Rayburn Bill conferred upon the Interstate Commerce Commission the power to regulate the issue of stocks and bonds by interstate carriers, limited the use of their proceeds to the accepted purpose of railroad enterprise and otherwise placed the subject generally within the jurisdiction of the Interstate Commission.

The bill passed the House in the summer of 1914 with only twelve votes against it. It went to the Senate and was never reported from Committee on Interstate Commerce. The reason given in the Senate was that the European War had come on and upset conditions in this country to a great extent, and that this charge upon the railroads at that time, or what was thought to be a new charge upon the railroads of the country, was held to be unjustifiable in view of the unsettled business conditions. The bill, therefore, died with the Sixty-third Congress. At the beginning of the Sixty-fourth Congress it was re-introduced by Congressman Rayburn and it has been reported unanimously from the Committee on Interstate and Foreign Commerce of the House. It is now upon the calendar and its proponents hope to secure its passage in the session beginning with December of this year.

The bill was presented in the House of Representatives by the Committee on Interstate and Foreign Commerce with a report from which we cull the following:

"The bill herewith reported proposes certain amendments to section 20 of the act to regulate commerce, which has for many years authorized the Interstate Commerce Commission to acquire all necessary information touching the condition of carriers as to physical property, their stocks and bonds, all of their accounts, reports, and details and methods of doing business. The commission found the act in some respects defective as to the authority conferred, and the amendments proposed in this bill in the first eleven pages are designed to supply the needed authority. The authority conferred by the terms of section 20 was not broad enough to cover the subjects, knowledge of which it was necessary to acquire inasmuch as it did not authorize the examination of books, papers, contracts, and correspondence of construction companies and other persons, natural and artificial, with which the carriers might have dealings of a character injurious to the transaction of interstate commerce. Neither did this provision confer authority to compel the production and furnishing of all information, books, accounts, correspondence, documents, and other papers. Neither did the terms of the section provide for the public and the stock and bondholders themselves the necessary publicity deemed so essential to the proper conduct of all public and quasi public business. It is thought by the commission and by your committee that the amendments proposed to the text, all of which amendments are indicated by being included in brackets and appear on the first eleven pages of the bill, are not only all necessary, but also will go far to supply defects in existing law.

"The amendments offered in the first eleven pages are in pursuance of the recommendations of the celebrated stock and bond commission headed

by Dr. Hadley, which thoroughly studied the entire question and made recommendations in line with the amendments hereinbefore referred to. Many witnesses before your committee thought that these amendments if made would constitute the only legislation necessary in the way of regulating the issuance of stocks and bonds. Some members of your committee concurred in that opinion, and all conceded that such amendments were necessary whether additional legislation were enacted on the subject of stock and bonds or not. However, on mature deliberation and full hearing your committee concluded that there was a very general belief throughout the country that something should be done by the Federal Government in the nature of constituting a veto power in the interest of stability and efficiency of the carriers themselves to prevent them from impairing their financial strength and consequently injuring or destroying their capacity to perform their function to the public as common carriers. There is no doubt of the power of Congress to authorize the exercise of such a veto power if necessary to protect the carriers against the cupidity or incompetency of their own directorates or the avarice and exploitation of speculators who would use their power to wreck the carriers in order to realize sudden and large gains. There is a popular belief that for that very purpose of protecting the carriers in their stability and financial ability to discharge their duties to the public it is necessary to authorize the Interstate Commerce Commission to prevent the assumption by the carriers of obligations of any character which would weaken their capacity as common carriers or tend in any way to impair their ability to afford proper facilities and service to the public.

"As section 20 of the act to regulate commerce had already authorized the commission to secure information of stocks and bonds and financial condition of the carriers, it was thought proper to perfect this provision to carry out the purposes intended, and it appeared peculiarly appropriate to incorporate by amendments in the same section the veto power upon the overissue of stocks and bonds because the two provisions are entirely cognate and germane one to the other. With the provisions beginning at the bottom of page eleven and occupying page twelve, authorizing the commission to pass upon every proposed issue of stock and bonds, section 20, as amended in the preceding eleven pages, becomes more valuable than ever, because it will enable the commission through its regulatory instrumentalities to keep itself constantly supplied with information as to the actual condition of all carriers, and thus be enabled to meet and checkmate any improper efforts that may be made to secure approval of an issue of stock or bonds. So that if the provision conferring authority for such investigation and veto power are adopted it will be only the more valuable by reason of the context in the preceding eleven pages and if those provisions following the first eleven pages should not be adopted, then section 20 as amended in the first eleven pages of the bill would be sufficient to afford great relief in themselves. It will be noted that your committee has provided against any possible friction or conflict of jurisdiction between the Federal commission and the state authorities by requiring that notice of every application for approval of stock and bond issues shall be given to the regulatory authorities of the state concerned, so that such authority may appear and be heard on the proposition. There is no doubt in our minds that that provision will rapidly lead up to a satisfactory working of the law and to absolute harmony and agreement between the two authorities.

"The provision prohibiting the overissuance of stocks and bonds may be enforced by either one of two provisions offered in the bill. One is by injunction against acts declared to be unlawful and the other is by criminal prosecution for their violation.

"Your committee has seen proper to provide and report another provision in the bill prohibiting common or interlocking directorates and management. When we learned that the Judiciary Committee was not undertaking to deal with the directorates of railroad companies, we then heeded what ap-

pears to be a public and almost universal demand to prohibit interlocking directorates of carriers. Whether the necessity for this provision is so great as represented or not and whether the anticipated benefits are exaggerated or not, there is a general impression that most of the wreck and ruin of railroads and consequent damage to public service and the public interest has been due to the machinations of men who managed different corporations, and by the policies adopted for the different corporations constituting a system or about to be consolidated into a system wrought ruin to some or all of the carriers involved. It has been represented to us that that practice has ceased, that railroad men are now no longer dishonest or incompetent, and that it is a matter of convenience for the same men to handle different enterprises without having to consult so many different people; but our observation is that there are good men enough in the world to fill every responsible position and then not have enough positions to go around, and we observe, in answer to the suggestion, that if the practice has ceased the provision in the law will not hurt anybody, for no man will be punished unless he is guilty. If any rash man should decide in the future to break out and imitate some of the disastrous escapades of the past, the law would be here to give him justice for his misdeeds. It has further been urged that in the case of large systems, formed by the consolidation of many smaller corporations, it is not necessary to have different directors for all the minor corporations. We answer that it is not necessary to have these consolidations; and the most vicious thing about all combinations in transportation and all other kinds of business is that, while they multiply the benefits of the few men retained, they dispense with the services of so many men both competent to fill the position and entitled to the fair emoluments thereof. We have thought it liberal enough to provide for relief in extreme cases through the approval of the Interstate Commerce Commission. The date is postponed two years, and if any case exists where it is necessary to the interests of the public or the preservation of the property and the maintenance of facilities of transportation that any man should be a director or officer in more than one corporation, your committee believes that the public and the carriers can trust the Interstate Commerce Commission to pass on the question. This position is germane and cognate to the preceding provisions of the bill, for the reason that the officers and directors of a carrier initiate all action issuing stock and bonds, which form the subject of previous provisions of the bill.

"The further complaint that the penalties prescribed are drastic is, in our opinion, not well taken. Punishments which fine a corporation are nugatory. The fines are paid out of the treasury of the corporation, no man suffers in the flesh as he feels no punishment as a violator of the law and the capacity of the corporation is weakened to the amount of money taken out of its treasury. That is a vicious system, as it is liable to make the public suffer through the infliction of inferior service and allows the culprits to go free instead of punishing them in person and takes much-needed money from the corporate treasury. There is but one way to make malefactors fear the law and that is to inflict personal punishment, and the severity of that punishment should be proportionate to the crime committed. The man who will unblushingly take advantage of his power afforded by his position in the financial world to wreck the facilities and ability of a carrier to discharge its duties to the public besides buncoing innocent investors out of hundreds of millions of dollars and embarrassing other innocent investors by unloading upon them worthless stock and bonds is worthy of the most severe human punishment, and for that reason your committee has left the punishment of such violators to the discretion of the court."

The measure itself, in its final form, provided generally as follows in reference to capitalization:

"From and after the passage hereof it shall be unlawful for any common carrier subject to the act to regulate commerce, as amended, to issue any capital stock or certificate of stock or any bond or other evidence of interest in or indebtedness of the carrier (hereinafter collectively termed "securities"), or to assume any obligation or liability as lessor of another carrier, or as lessee, guarantor, surety, or otherwise in respect of the securities of any other person, natural or artificial, if connected with or relating to that part of the business of such carrier governed by the Act to regulate commerce as amended, even though permitted by the authority creating the carrier corporation—

"(a) unless it be for some purpose within its corporate powers and in the public interest, necessary or appropriate to the proper performance of its service for the public, and not intending to impair the financial ability of the carrier to discharge its duty to the public; and

"(b) unless and until, and then only to the extent that, upon application by the carrier, and after investigation by the commission of the purposes and uses of the issue and the proceeds thereof, such issue is approved by order of the commission as reasonably necessary or appropriate for the purposes stated.

"Each such application shall be made in such form as the commission may from time to time determine and prescribe, and shall set forth such matters as the commission may require, including:

"First (a) The total amount of proposed issue, and how authorized by or on behalf of the carrier;

"(b) The number and amount of all of its securities outstanding at any time prior to the date of such application, the amount thereof retired prior to said date, the amount thereof then undisposed of, and whether such amount is held in the treasury of the corporation as a free asset or pledged, and, if pledged, the terms and conditions of such pledge;

"(c) The number and amount of securities then to be issued, and whether to be sold, pledged, or held in the treasury of the corporation as a free asset, or otherwise disposed of or applied, as the case may be, specifying number and amount in each case; if any such securities are to be sold, the terms and conditions of sale; if any part of the consideration to be received therefor is other than money, an accurate and detailed description of such consideration; if any such securities are to be pledged, the terms and conditions of pledge; or if other disposition or application is to be made, a full and detailed explanation thereof;

"(d) The number and amount of its securities so authorized, but not then to be issued;

"(e) If the issue is of shares of stock, the number thereof, the face or par value thereof, if any, specifying whether common or preferred, and the number and kinds of then outstanding shares previously issued.

"Second. The preferences or privileges granted to the holders of any such securities; the dates of maturity, rates of interest, or fixed dividend, whether cumulative or not, and any conversion rights granted to the holders thereof, and the price, if any, at which any such securities may be retired or redeemed.

"Third. The purposes to which the proceeds of the issue are to be devoted, in such detail as the commission may require.

"Fourth. In case of proposed assumption of any obligation or liability in respect of the securities of any other person, natural or artificial, like showing shall be made as to the financial condition of said other person, as also of the objects sought and benefits to be realized by the carrier from such assumption, to be accompanied by copies of any agreements or contracts therefor.

"Every application for authority, as also every certificate of notification hereinafter provided for, shall be made out under oath, signed, and filed on behalf of the carrier by its president, a vice president, auditor, comp-

troller, or other executive officer having knowledge of the matters therein set forth and duly designated for that purpose by the carrier.

"Whenever any securities set forth and described in any application for authority or certificate of notification as pledged or held as a free asset in the treasury of the carrier shall, subsequent to the filing of such application or certificate, be sold, pledged, repledged, or otherwise disposed of by the carrier, such carrier shall, within ten days after such sale, pledge, repledge, or other disposition, file a certificate of notification to that effect, setting forth therein all such facts as are required by subdivision (c) of the foregoing first paragraph, or as may be required by the commission.

"Upon application to the commission for approval of proposed issues of securities the commission shall cause notice to be given to the railroad commission or public service or utilities commission, or other appropriate authority, of each state in which the applicant carrier operates. The railroad commission, public service or utilities commission, or other appropriate state authority thus notified shall have the right to present before the commission such representations as they may deem just and proper for preserving and conserving the right and interests of their people and the states, respectively, as involved in such proceeding. The commission may hold hearings, if it sees fit, to enable it to determine its decision upon the application for authority.

"Nothing herein shall be construed to imply any guaranty or obligation as to such issues on the part of the United States.

"The foregoing provisions of this section 20a shall not apply to notes to be issued by any said carrier maturing not more than two years after the date thereof and aggregating not more than five per centum at any time of the securities of said carrier then outstanding. Within ten days after the date of such notes the carrier issuing the same shall file with the commission a certificate of notification, in such form as may from time to time be determined and prescribed by the commission, setting forth as nearly as may be the same matters as those required in respect of applications for authority to issue other securities.

"The commission shall require periodical or special reports from all carriers hereafter issuing any securities, including such notes, which shall show, in such detail as the commission may require, the disposition made of said securities and the application of the proceeds thereof.

"All issues of securities contrary to the provisions of this section may be enjoined by any court of competent jurisdiction at the suit of the United States, the Interstate Commerce Commission, or of any director, officer or stockholder of the carrier proposing to make the issue; and any director, officer, attorney or agent of such corporation who assents to, or concurs in, any issue of securities forbidden by this section 20a shall upon conviction be punished by a fine of not less than \$1,000 or more than \$10,000, or by imprisonment for not less than one year nor more than three years, or by both such fine and imprisonment, in the discretion of the court.

"From and after the passage hereof it shall be unlawful for any officer or director of any operating carrier to receive for his own benefit, directly or indirectly, any money or thing of value in respect of the negotiation, hypothecation, or sale of any securities issued or to be issued by a said carrier, or to share in any of the proceeds thereof, or to participate in the declaring or paying of any dividends of an operating carrier from any funds properly included in capital account, or otherwise than from the revenues of said carrier. Any violation of these provisions shall be a misdemeanor, and on conviction in any United States court having jurisdiction shall be punished by a fine not less than \$1,000 nor more than \$10,000 or imprisonment for a term not less than one year nor more than three years, or by both such fine and imprisonment, in the discretion of the court."

With this disposition by Congress in 1914 of the Rayburn Bill, pressure for national legislation on the subject of railway capitali-

zation was relaxed. During the period covered by the past two years, the subject of railroad regulation and railroad capitalization has been one of national focus. The celebrated Five Per Cent Rate Cases have been fought out not only before the Interstate Commerce Commission but before the country. The national valuation of the interstate carriers has been the occasion of protracted discussion. The whole issue of public utility and railroad regulation has been raised.

The national expression for the present comes in the form of a resolution from Congress, approved by the President, authorizing a general inquiry into the whole subject of railroad regulation and the issue of private ownership in relation to public ownership. This resolution, which may be taken as the legislative attitude of the day, is as follows:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Interstate Commerce Committee of the Senate and the Committee of the House of Representatives on Interstate and Foreign Commerce, through a joint sub-committee, to consist of five Senators and five Representatives, who shall be selected by said committees, respectively, be, and they hereby are, appointed to investigate the subject of the Government control and regulation of interstate and foreign transportation, the efficiency of the existing system in protecting the rights of shippers and carriers and in promoting the public interest, the incorporation or control of the incorporation of carriers, and all proposed changes in the organization of the Interstate Commerce Commission and the Act to regulate commerce, also the subject of Government ownership of all public utilities, such as telegraph, wireless, cable, telephone, express companies, and railroads engaged in interstate and foreign commerce and report as to the wisdom or feasibility of Government ownership of such utilities and as to the comparative worth and efficiency of Government regulation and control as compared with Government ownership and operation, with authority to sit during the recess of Congress and with power to summon witnesses, to administer oaths, and to require the various departments, commissions, and other Government agencies of the United States to furnish such information and render such assistance as may, in the judgment of the joint sub-committee, be deemed desirable, to appoint necessary experts, clerks, and stenographers, and to do whatever is necessary for a full and comprehensive examination and study of the subject and report to Congress on or before the second Monday in January, 1917."

We come, therefore, to the present day unsettled conditions affecting interstate railroad and public utility capitalization. We find on the one hand the insistent and sharp demand of the railway captains, their bankers and friends for a lessening of the power of regulation. Nowhere do we find a suggestion from this quarter that present conditions may be bettered or in any degree alleviated by Federal control of capitalization. On the contrary, all the arguments from this source are either directly or inferentially against such regulation. Nor is the argument directed solely against Federal control of capitalization, but equally against state control. These gentlemen are able to take advantage of certain inconsistencies in our present scheme of regulation, and they do so to the full benefit of their contention.

And to the extent that they are right and logical in their position, we believe that this Association should frankly recognize the condition and aspire to its correction. This has been the purpose of your membership in its previous reports and it will be the purpose of this committee.

Mr. Otto Kahn, of Kuhn, Loeb & Company, active in the financial management and control of the so-called Harriman lines, has properly called to the attention of the country an anomalous and almost absurd situation to which the notice of this Association was directed as long ago as 1913. It will be recalled that the Southern Pacific Company had applied to the California Commission and to the Arizona Commission in pursuance of law for authority to issue \$30,000,000 of its two-year notes. The authority was granted by the California Commission and denied by the Arizona Commission and Mr. Kahn uses this fact to the derogation of control over public utility capitalization.

Mr. Kahn finds much to complain of in the present system of regulation and his criticisms and complaints are typical of the entire school of railroad financiers whom he represents. We quote Mr. Kahn:

"What with the regulating activities of forty-three commissions besides the Interstate Commerce Commission, the adoption by state legislatures of rate-fixing measures, extra crew bills, and all kinds of minute enactments (between 1912 and 1915 more than 4,000 Federal and state bills affecting the railroads were introduced and more than 440 enacted), the enormous increase within the last seven years in the Federal and state taxation, the steadily mounting cost of labor, the exactions of municipal and county authorities, etc.—it will be admitted that the cup of railroad difficulties and grievances is full. I am far from holding the railroads blameless for some of the conditions with which they are now confronted. But, in their natural resentment and their legitimate resolve to guard against similar conditions in the future, the people have overshot the mark. The proof of the pudding is in the eating. Not less than 82 railroads, comprising 41,988 miles and representing \$2,264,000,000 of capitalization, are in receivers' hands, and the mileage of new railroads constructed in 1915 is less than in any year since the Civil War.

"Railroad credit has become gravely affected. It is true that faults of management and disclosures of objectionable practices have been contributory causes in diminishing American railroad credit, but from my practical experience in dealing with investors I have no hesitation in affirming that the main reason for the multiplication of railroad bankruptcies and of the changed attitude of the public toward investing in railroad securities is to be found in the Federal and state legislation of the years from 1906 to 1912 and in what many investors considered the illiberal, narrow and frequently antagonistic spirit toward railroads of commissions charged with their supervision and control. The fortuitous and fortunate circumstances that, owing mainly to the direct and indirect effect of the stimulus of huge war orders, and the cause of other unusual circumstances, railroads are doing much better at present; and that investors, after having left railroad securities more or less severely alone for years, are, for the time being, looking upon them with a friendly eye, should not make us lose sight of the underlying fact that the railroad industry is in an inherently weakened condition, that the spirit of enterprise has largely gone out of railroading; that, generally speaking, expenditures for construction, equipment, improvements, etc., are confined to the absolute necessities.

"Railroads, being essentially nation-wide in their functions, should, as to rates and other phases of their business, directly or indirectly affecting interstate results, be placed under one national authority, instead of being subject to the conflicting jurisdiction of many different states, always subject to the temptation of being used unfairly for the selfish and exclusive advantage of the respective individual states. State commissions have their proper and important functions in the supervision and regulation of street railways and public service corporations other than interstate steam railroads, and even in the case of the latter in the exercise of certain administrative, police, or public welfare powers within well defined limits. But the fundamental law of the land, the Federal Constitution, expressly reserves to Congress the exclusive power of dealing with commerce between the states.

"The present lopsided structure of railroad laws ought to be demolished and superseded by a new body of laws designed, not to punish the railroads, but to aid them toward the greatest development of usefulness and service to the country, conceived upon harmonious, carefully considered, scientific and permanent lines."

Mr. Warren S. Stone, President of the Brotherhood of Locomotive Engineers, has stated the case with as much emphasis in favor of the regulation of railroad capitalization as Mr. Kahn has urged against an increased degree of supervision. Mr. Stone urges that the present conditions of railroad finance point to nothing more insistently than the necessity of a regulation of their stock and bond issues and their finances generally:

"If you will take the time to read the Government reports issued by the Interstate Commerce Commission," said Mr. Stone, "you will find there a history of financial juggling,—a history of how many of the best roads in the country have been exploited and wrecked by a little group of financial pirates. All this in language much stronger than I have used. And you will agree with me that the time has come when, if the employees are to receive a fair share of their productive efficiency, and if the public, who pays all the bills, are to be considered, this exploitation must cease.

"The remedy, in our opinion, lies in governmental regulation of railroad capitalization and securities. When this is done, exploitation will cease, railroads will receive a fair return on their actual investments; the employees, a wage commensurate with their service; and the American people, good service and a square deal."

The late Mr. John M. Eshleman, in one of his last public statements, addressing a gathering in San Francisco at which many of the members of this Association were present, and replying somewhat directly to utterances expressing the viewpoints of the railroad and public utility financiers, used language which we think it not amiss to quote. Said Mr. Eshleman upon this occasion:

"Indulging my belief that the men engaged in public utility enterprises are no worse on the average than the rest of us, and believing that perhaps you and I would have done exactly the same as these men have done had we not been checked, yet I can not refrain from calling your attention to something that you, in your hearts, know is true. These men in public utility business and the men in all business, as far as that is concerned, have desired to get as much from the public with as little effort as is possible; and the program of the public utility in the past has been to attempt to make the patron give both the capital and thereafter an earning upon such capital. And the reason for the stagnation concerning which you gentlemen now so



eloquently complain, if stagnation does exist, and the reason for the financial troubles that beset you, other than those reasons that are world wide, is the fact that regulation has arrested this program before it was carried out; and we have been required, as it were, to attack our problem in the middle.

"We gave the railroads of the United States to their present owners. There is not one bit of question that the donations in lands, rights of way and privileges and excessive rates have much more than equaled the value of these properties. We were in the process, until the American people awakened, of giving likewise their property to other public utilities. The same plan was followed by the gas and electric company that has been followed by the railroads.

"You can not create value with a printing press, yet these agencies were issuing stocks with no value behind them, and then, from the rates and from public grants, gradually putting value behind such stocks. Necessarily, therefore, if sufficient time has not elapsed to permit the carrying through of the program, as has been the case with most of the railroads, the values of the stocks will be held down; and with obligations exceeding the present value of the property, and no possibility, through excessive rates and special privileges, to remedy this condition, it becomes hard for the overburdened utility to borrow money for its extension. If we understand this question aright, we see that their inability to borrow money is not due to the fact that the rates are too low, but due primarily to the fact that these agencies have already borrowed too much.

"I desire to speak quite frankly to you, and to let you understand that some of these sophistries indulged here tonight and some of the sophistries being put forward to the public are not convincing to all of us. If I could, I would like to persuade you of not only the impropriety but the actual disadvantage to yourselves of indulging in such sophistries and in such misleading statements. What we need today, both on the part of the public and the public utility, both on the part of the Government and business enterprises, is straight thinking. Too much intellectual dishonesty we find in those seeking to justify a condition that is not justifiable.

"It has been suggested in one of the papers here tonight that those engaged in regulation are thick-headed, that some of us are demagogues, that others are corrupt. I can not, with patience, listen to any such suggestion. In passing, I might ask, if we are corrupt, who has made us so? If, in the past, public officials have forgotten their trust, who induced them so to do? My friends, one of the dark stains upon the escutcheon of this nation, one of the things we want to forget if we can, but one of the things that will leave its imprint upon generations yet unborn, has been the connection between public utility enterprises and the public officials. Sometimes, to be sure, public officials have not merited your respect, and all too often you have contributed to his delinquencies.

"Today public officials are, in the main, better public officials than they have been in the past; and I say this from a study of this question and from a sufficient knowledge, so to speak. Today public officials are better capable from preparation and understanding, to handle the questions of government. And of this you complain. Your inconsistency is shown by the fact that your complaint is deferred until public authority is more respectable. We do not find the great financial enterprises complaining against corrupt public authority at the times when history discloses such authority was really corrupt, and corrupt for the benefit of these very agencies.

"It may be that I have said some things here that will hurt the sensibilities of some of you. I am sorry, but I have said them in the spirit of frankness; and I urge that it is up to you men, as it is up to public authority, first, to get your hearts right and to bring yourselves to that state of mind which leads you to desire to do right and then try to find out how to do it. The fact that a man has the desire to do right does not necessarily preclude the possibility of his knowing how to do it. Not always do soft-heartedness and soft-headedness go together. What we need to day is the public official who has a feeling for the needs of the public, who recognizes

the need of the weak, but at the same time has the clear vision and has the adequate understanding which enables him justly to handle the problems that confront him. I can not, in closing, refrain from complimenting my friend Mr. Shoup, who, although he has reached some very erroneous conclusions, still, I am glad to say, is one of the men who, in my opinion, is attempting to bring about a proper feeling on these great questions, who is coming to see that the representative of these large interests must himself think straight and must expect the public authorities to think straight, and who does not, if I may use a common expression, bull himself into believing that public authority will in the future submit to extortion. If we analyze some of his figures we will find they do not justify his conclusions. If you eliminate from the roads in the hands of receivers, the Rock Island, the Frisco and several others, that have been put there by reason of the fraudulent practices of those in control, you will have a less number of miles today than the average in the hands of a receiver. And take our own case here in California—the Western Pacific, one of the Gould lines. That road has never had a rate reduced by any public authority, it has never had its finances affected in the slightest way by any public authority; its receivership is entirely independent of any public authority and due altogether to financial mistakes of its promoters, as is the case with the other Gould lines.

"In conclusion, I desire to say to you men here tonight that you must learn your lesson, and that you must understand that right or wrong, government in the future will control. No longer will the people of this nation submit to those things that the records show have been done against them in the past. No longer will they submit to the building up of great fortunes from the public generosity. Hereafter they are going to contend more and more that the cost of doing the business shall be the price which they must pay. And you men must understand that public authority, whether it is respectable or not, is going to control you; and it is up to you to endeavor to aid those of us who are working to the utmost of our ability to bring about the result where public authority that only is respectable, not only is honest, not only, my friends, free from your undue influence, but is wise and foresighted and clear-thinking. To any man who desires only what is right, this program must appeal. From any man who desires more than his due, we expect continued opposition. But no longer in America, I am thankful to say, is the problem of honesty in government the principal one; because, I believe, we have reached that stage of development where, as a rule, only honest men can be elected to public offices. But having reached the position where honesty in public office is to be the rule, we should all attempt to take the next further step, and see that efficiency in public office is achieved. Let us look these problems in the face. Let us have the will to do right; but let us also think straight, and not permit our own selfish interests to influence our judgment on questions of such importance."

Before passing from the present day expressions and thought on this subject, from whatever source emanating, we note the increasing interest in the present and related topics on the part of the Investment Bankers of America. And this interest, of course, springs from their purchase and sale of the stocks and bonds of the railroads and public utilities. It has been so insistently stated, and as insistently denied, that stocks and bonds affect rates, that we commend to those who still adhere to the negative of this proposition the address of Mr. A. B. Leach, President of the Investment Bankers Association of America, before that body in Denver, in September of last year. Said Mr. Leach:

"Through our membership, there has been placed in this country and in Europe a very large percentage of all of the railroad bonds and stocks, the proceeds of which have served to build up that magnificent system of transportation lines of which this country has reason to be proud. Savings banks, insurance companies and the general investment public are the owners to-day of these securities, while a considerable proportion of them is held abroad. In view of this situation, a very strong and able committee of our members attended a session of the Interstate Commerce Commission when the eastern railroad rate question was under consideration. They presented, with all possible emphasis, that the investor's position in relation to the rate question is that the railroads should be granted the increase asked for, whatever may have been the errors or failures or mistakes of mind or purpose in the issuing of some of these securities, the fact remains that the railroads have become very important, if not the most important industry of this country and the investments in railroad securities form a very large percentage of the security for the savings of our people, in more than one way."

Any summary of the present day thought on the topic of railway capitalization and its control would be incomplete without a reference to kindred legislation which is finding its place on the statute books. We refer particularly to the creation of the Tariff Commission, the Federal Trade Commission and the measure providing for a commission to supervise shipping rates and shipping conditions in America.

With this summary of the past and present attitude on this extremely important topic as expressed first by the representatives of the carriers and public utilities, and their financiers; and second by the wage earners employed by these carriers; and third by the public through its representatives on the Interstate Commerce Commission and in Congress, we pass to a consideration of the future welfare of the country as related to this subject.

We start from a condition of today where regulation of capitalization is an accepted thing. It exists today under state control. The question to be determined then is not "Shall railroad and public utility capitalization be subject to public supervision"? It is rather, "Shall interstate railroad and interstate public utility capitalization remain subject to the jurisdiction of the various state commissions, or shall it be made subject to Federal authority"?

We reiterate the expression on this subject heretofore promulgated by your Association, and we unhesitatingly and emphatically declare our belief that the capitalization of the interstate carriers and the interstate public utilities should be subject to Federal authority. To state the proposition is at once to answer it. It is not necessary to review the many cases so well known to the members of this Association, wherein several states have attempted to exercise jurisdiction over the identical issue of stocks and bonds by interstate carriers.

The decision of the Maryland Court of Appeals in reference to the authority of a single state to supervise an issue of \$63,000,000 of bonds of the Baltimore and Ohio Railroad, which traverses several states, is a case particularly in point. Said the Court:

"An interstate carrier may, as laid down by Chief Justice Waite, be made subject to the control of each state as to matters affecting the operations of the company within the state, but beyond that, state legislation is powerless without striking at the very fundamentals of rights as recognized in our government \* \* \* Manifestly, the public service commission of this state is not, and could not be, invested by the legislature of this state with any supervisory power over the expenditure of moneys in other states, nor the apportionment of the expenditure of its money as between different states, nor could it pass upon to approve or condemn the wisdom or unwisdom of construction work to be performed in Virginia, West Virginia, Ohio, Indiana, Illinois, Missouri, Delaware, and other states \* \* \*.

"It may well be that the time will come when the jurisdiction of the Interstate Commerce Commission will be so broadened as to confer upon it a power to regulate in some measure the fiscal management of the great interstate carriers of this country, and enable them to prevent in the future some of the ill-advised and unfortunate policies of the past. But the fact that such a power has not yet been conferred can not authorize a state to grasp a jurisdiction it was never intended it should authorize."

Nor is this situation wholly confined to interstate railroads. For instance, western commissions have been asked to pass upon the bonds of the Pacific Telephone and Telegraph Company, which operates in the states of Washington and Oregon and California. It is so obviously absurd to try to split a great interstate enterprise into component units, divided in accordance with state boundary lines for the purposes of supervising its capital issues, that we most respectfully urge in the name of pure common sense that this situation be no longer permitted to endure. It should be speedily terminated, and the remedy lies not in surrender of present authority, but in the transfer of that authority where it belongs by all of the dictates of practical thought—to the Federal authority.

We believe it follows so clearly as a necessary corollary that we here urge upon you the practical benefits to be derived from a national incorporation act. Let us assume Federal control of capitalization under our present system of laws and at once we perceive that any state with its existing powers could render nugatory that same Federal authority. The incorporation laws of the various states today repose in those states the full power to classify and circumscribe stock or bond issues, and restrictive measures in a single state might render Federal authority wholly impotent. We are unable to see how, having declared your adherence to the proposition of Federal control over interstate capitalization, you can escape an equal adherence to a national corporation act. Otherwise you grant the shell without the substance.

Let us frankly recognize the deficiencies of our present system and willingly adjust our regulative authority to serve the public good. We are not able to share the alarms of the executives and bankers more intimately connected with the affairs of the interstate carriers. The Federal regulation of their capital issues can not harm legitimate enterprise. It can only help. We can point to examples of thorough-going state supervision of capital

issues wherein the whole financial fabric of a commonwealth has been established on a plane infinitely higher than it had theretofore known. We are indulging in no pastime of catch phraseology when we assert that Federal regulation of capitalization of interstate carriers will be just as helpful to those carriers as to the public.

The great interstate railroads today have developed to a commercial size and efficiency which must command universal admiration. The higher the degree of this development, the more powerful and the more logical becomes the plea for adequate public supervision. In the Federal control of their capitalization the railroads will in time find an increasing credit, a growing clientele of investors and expanding avenues to new resources. Gradually will come a process of standardization; a simplification and classification of mortgages; and a modification of existing laws giving railroad securities access to funds not now available. All this may be attained without national guarantee, but with the same enlightened system of regulation that has marked Federal authority in other capacities. We may look for a more ready welcome of the railroad security into the processes of the Federal reserve banking system. Government has legislated to the benefit of the credit of the merchant and the manufacturer, and recently, in the Rural Credits Bill, for the advantage of the farmer. With the regulation of railroad capitalization we may reasonably expect legislation designed in the interest of railroad credit.

It is so plainly to the advantage of the shipper and the use of railroad service that these carriers be enabled to borrow cheaply, that government may well act for the benefit of the whole people when it legislates in behalf of railroad credit. Too often has the argument for higher railroad credit been urged through methods inconsistent with the public interest. It does not follow that the desire of a high railroad credit can be met solely by an augmented rate schedule. We earnestly believe that eventually, with Federal regulation of interstate capitalization government may find it fitting to legislate still further toward the betterment of railroad credit.

We do not regard seriously the objection that national supervision of stocks and bonds would carry with it, either directly or indirectly, a governmental guarantee or moral responsibility for such bonds. A supervision over national banks has never been interpreted as a guarantee of national bank deposits. Commissioner Clements has ably discussed these objections sometimes raised against Federal supervision of capitalization, and we refer to his statements quoted at the beginning of this report.

We believe that the time has come to squarely meet the issues into which the whole subject of public utility regulation has been involved. We may begin by accepting as a fact that something is wrong with our present relationship of government and interstate carriers. The transportation of the country is too vital to be allowed to long continue as a subject of public controversy.

We are able to draw to advantage from the experience of the several states, and we believe that there it has been thoroughly demonstrated that one of the most important elements is a correct administration and supervision of capitalization. This supervision does not entail a superficial and critical attitude, but rather one of complete sympathy with the legitimate purposes of railroad enterprise. We may refer to advantage to the ample experience of the State of California. There the State Commission has authorized in a little over four years, \$664,000,000 of stocks and bonds; of this sum \$316,000,000 for additions and betterments and \$180,000,000 for refunding purposes. The state has witnessed many important financial reorganizations, but those corporations which required reorganization were those which had not been subjected to the Commission's power of supervision over capitalization. The whole tendency of the Commission's efforts was toward financial solidarity. This very power of regulation was successfully invoked to preserve and restore corporations which might otherwise have been obliged to succumb. And where financial reorganization did take place, it has been on so high a plane as almost to amount to a readjustment of the whole public utility financial fabric of that commonwealth. And where public utility financing was careless and often unsafe, it has become scientific and sound. The result is expressed in the response and ready flow of capital.

The same may be said of those other states which have used the same care in supervising public utility capitalization. These state commissions have become in many sections sources of help to the public utility corporations, eagerly sought, for aid and advice in arranging their financial affairs.

We assume, therefore, that the action of your Association, as expressed in past conventions, commits it certainly to the first of these two propositions, and we think, necessarily, to the second.

(1) Federal control over the capitalization of interstate railroads and interstate public utilities.

(2) A national incorporation act for interstate railroads and interstate public utilities.

From this understanding of general policy, we believe that this Association may, with profit, point the way for the full economic advantages that should naturally flow therefrom. Your Committee has therefore set forth ten separate considerations to which it will ask the Association to lend its support.

We pass then to proposition No. (3)—the Federal control over mergers, consolidations and mortgages of interstate railroads and public utilities.

We believe again that any effective Federal regulation of stocks and bonds must, of necessity, carry with it a supervision over any comprehensive addition or diminution or encumbrance of the properties on which such stocks and bonds may rest. We may assume, for instance, that a perfectly solvent carrier has been

duly authorized to issue a given amount of stocks and bonds and that it thereafter purchases a neighboring railway so heavily burdened with indebtedness as to be practically bankrupt. At once the stocks and bonds issued under the authority of the Federal government upon the faith of the conditions of the property at that time, will be weakened and impaired by reason of the consolidation.

We need but to recall the story of the New York, New Haven and Hartford Railroad to make our purpose clear. There, it will be recalled, the mischief came in the outrageous prices paid for purchased properties. Without supervision over such mergers or consolidations, Federal authority over stocks and bonds could be woefully misused by the very instrumentalities to be regulated.

We place before your Association our proposition No. (4), with the belief that it will meet ready acquiescence.

We propose that control over receivership proceedings of interstate carriers and public utilities, at least in so far as they affect capitalization, should be placed under the authority of the Interstate Commerce Commission.

We again refer to the very clear exposition of Commissioner Clements, quoted at some length in the earlier pages of this report. It is well known that receivership proceedings have long been made the occasion for a raid upon wrecked enterprises. To such an extent has this practice been carried, that the profit in the wreckage has become an inducement to failure. This condition has amounted to national scandal. It should not longer be tolerated. Our present system permits and encourages the grossest extravagance and dissipation of funds at the very time when all energies should be bent toward their conservation. A perfectly orderly and economical proceeding would constitute the Interstate Commerce Commission as the official receiver of all such properties. The Commission could then put its agent in charge, administer the affairs of the embarrassed railroad, and with the greatest despatch readjust its finances and transfer it thus reorganized to its owners. Some such procedure could be evolved as is now employed to administer the affairs of incapacitated national banks and, in some places, state banks. Through this method enormous savings would naturally be effected.

We cite as an example of receivership costs the case of the Western Pacific Railway. This enterprise, consisting of approximately 1,000 miles of railway, had been built at a cost of nearly \$80,000,000 and was sold to the holders of the \$50,000,000 of first mortgage bonds for the price of \$18,000,000. The receivership lasted eighteen months and was widely advertised as exceptionally brief and inexpensive. The original statement of costs was as follows:

Attorneys for Receivers .....	\$170,000
Receivers' Salaries (two Receivers) .....	80,000

First Mortgage Trustee .....	25,000
Counsel for first Mortgage Trustee .....	75,000
Special Master .....	30,000

(a) Sale of property, advertising, etc. ....	\$4,500
(b) Stamp tax .....	15,000
(c) Bond .....	1,500
(d) Salary .....	7,000
(e) Miscellaneous .....	2,000

Commission of Underwriting Syndicate .....	400,000
Compensation of Underwriting Guarantors .....	100,000
Central Trust Company of New York .....	12,607

(a) Cross complainant in foreclosure suit .....	\$5,000
(b) Counsel .....	7,500
(c) Expenses .....	107

Special Master's Trip to Europe .....	5,000
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(a) Compensation and Traveling Ex- penses .....	\$3,000
(b) Expenses of advertising and distribut- ing funds, etc. ....	2,000

Cost of Incorporating the Western Pacific Rail- road Corporation .....	91,550
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(a) Incorporation Tax .....	\$3,850
(b) Federal War Tax on original issue of stock .....	37,500
(c) Federal War Tax on transfer of stock .....	15,000
(d) New York Tax on transfer of stock .....	15,000
(e) Engraving of Stock Certificates and other printing .....	5,000
(f) Notary filing fees, etc. ....	100
(g) Resident Delaware Agent .....	100
(h) Counsel fees for preparing charter bylaws, stock certificates, attend- ing to incorporation, issue of stock and incidental matters .....	15,000

Dutch Bondholders Protective Committee .....	20,000
Dutch Stamp Tax and Transportation of Securities .....	25,000



Western Pacific First Mortgage Bondholders Committee .....	218,000
(a) Depositary and agents of Depositary .....	\$40,000
(b) Printing, postage and other disbursements to date .....	12,600
(c) Disbursements of Counsel .....	5,400
(d) Counsel fee .....	60,000
(e) Secretary .....	5,000
(f) Eleven members of Protective Committee at \$7,500 each .....	82,500
(g) Chairman .....	12,500
Reorganization Committee .....	300,492
(a) Depositaries and Agents .....	\$40,000
(b) Printing, postage, traveling expenses, and other disbursements to date .....	20,492
(c) Disbursements of Counsel .....	5,000
(d) Secretary .....	10,000
(e) Eleven members of Committee at 12,500 each .....	137,500
(f) Chairman .....	27,500
(g) Counsel Fees .....	60,000
Minority bondholders' attorneys' fees .....	30,000
Incidental and unexpected expenditures .....	25,000
Total.....	\$1,607,649

Certain of these charges were curtailed by the state commission and the Federal Court, but at that the abuse was only lessened in degree and not eliminated.

In passing upon the plan of reorganization of the St. Louis and San Francisco Railroad Company, the Missouri Public Service Commission called attention to the vast sum proposed to be set aside for reorganization expenses. It appears that the petition in the reorganization proceedings massed capital improvements and reorganizations expenses into a single general item. The matter was presented to the Commission as follows:

"Improvements and betterments, additions, acquisitions including equipment, court costs and other legal expenses, including compensation and disbursements of trustees of existing mortgages; reorganization managers' compensation; syndicate commissions; engraving of new securities; accountant and other expert fees and expenses; charges for listing securities on various stock exchanges; compensation and disbursements of committees and others representing existing securities, including depositaries; organization, franchise and other taxes, including stamps and other organization and miscellaneous expenses, contingencies, etc.; balance to New Company as additional working capital, \$6,833,631."

In passing upon this feature of the petition the Missouri Commission said:

"In re Investigation of St. Louis & San Francisco Railroad Receivership, 29 I. C. C. 139, 1. c. 153, the Interstate Commerce Commission severely criticised the former financial policy and management of said railroad company for the payment of 'extravagant rates of discount, including the payment of premium on retired issues and commissions to banks and bankers on such issues.'

"Section 57 of the Public Service Commission law of this state makes it incumbent on this Commission to find as a fact and state in its order authorizing the issuance of stock, bonds, notes and other evidences of indebtedness, 'the purposes to which the issue or proceeds thereof are to be applied, and that, in the opinion of the Commission, the money, property or labor to be procured or paid for by the issue of such stock, bonds, notes or other evidence of indebtedness is or has been reasonably required for the purposes specified in the order.' Such has been the construction placed upon similar statute in New York, *People ex rel. Delaware & Hudson Co. v. Stevens*, 197 N. Y. 1. c. 9; *People ex rel. Binghampton Light, Heat & P. Co. v. Stevens*, 203 N. Y. 7; *People ex rel. T. A. Ry. Co. v. Public Serv. Com.*, 203 N. Y. 1. c. 310, and *People ex rel. W. S. R. R. Co. v. Public Serv. Com.*, 210 N. Y., 456.

"Witness Frederick Strauss, representing J. & W. Seligman & Company, one of the reorganizers, testifying in this case, could not enumerate the amounts for the specific items for which the said expenditure of \$6,833,631 was to be made, or for the several various reorganization expenses enumerated in the petition. Witness James Speyer, representing Speyer & Company, one of the reorganizers, when testifying in this case corroborated the testimony of Mr. Strauss in regard to such indefinite proposed expenditures.

"The testimony is undisputed that at this time it cannot be known as to the several amounts provided for reorganization expenses. While this Commission feels that reasonable and just expenses for counsel and reorganization managers and other various necessary expenses in connection with a reorganization of this magnitude should be paid, yet it will not approve of extravagant or wasteful expenditures in connection with such reorganization. While the Commission will authorize the blanket expenditure as provided in the petition not to exceed the sum of \$6,833,631, yet it will attach to the order authorizing such expenditure, and will require that a properly itemized statement for each proposed expenditure shall be submitted to the Commission by the New Company, with a certificate of one of its officers, duly verified, that such expenditure is reasonable and just, and the Commission will then determine the specific amount to be allowed therefor, and authorize the issuance of such securities for that specific item by supplemental order. In this way the stockholders and the public will be fully protected by preventing either needless or extravagant expenditures in the reorganization of this great property. The evidence at this time is not sufficient for the Commission to pass upon each specific item of proposed expenditure and the matter will be handled in the final order to be issued by this Commission authorizing the new corporation to make the expenditures of said \$6,833,631 as herein provided."

We might readily expand our list of illustrations, but refer your Association to the comments of the Interstate Commerce Commission in relation to roads which have come to grief and the excessive costs imposed thereupon. The so-called Pujo Money Trust Committee, commented upon this situation, and these comments led Mr. Samuel Untermyer to suggest remedial legislation which should give the Interstate Commerce Commission a voice over certain features of receivership proceedings.

It is interesting for your Association to note that this problem has been a source of very grave concern on the part of the Investment Bankers Association of America. In discussing this subject before the Association's convention in 1915, Mr. John E. Blunt, Jr., Vice President of the Merchants Loan and Trust Company of Chicago, had this to say:

"A reorganization is usually the outcome of a situation of which the first step is a receivership. Close upon the heels of the latter follow the 'Protective Committee' with their bondholders' agreements. You read in the evening paper that a certain property has gone into the receiver's hands; in the morning paper you find certain parties, at the request of a large number of bondholders, have consented to act as a committee. What is a bondholders' agreement? Briefly, it is a more or less elaborate power of attorney giving to the committee authority to do what in its judgment may seem best for the bondholders' interests. There are limitations, restrictions and privileges of withdrawal, but in actual practice it amounts to a complete delegation of power.

"If you desired, in the ordinary course of business, to give a power of attorney to an individual you would naturally want a man in whom you had complete confidence as to his integrity, his judgment and his ability. There is no reason why the same standard should not apply to a member of a bondholders' committee. He should really represent the bondholders and should be selected for his qualifications for the position. He should realize its responsibility and trusteeship nature and be able to give sufficient time to make his services of some value.

"The practice of officers of the trustee acting on a committee is subject to criticism. There should be cooperation between the committee and the trustee, and the advice of the latter is frequently of great value, but they should not attempt to serve in what might prove a dual capacity, but rather hold themselves in readiness to act as a check on the committee when necessary. In other words, they should act with, but not on the committee. I do not know why this Association should not at a future meeting outline some plan for the selection or election of bondholders' committees.

"A word may be said here on the question of expenses. They often seem out of all proportion to the results accomplished. Men who devote their time to constructive work should be well paid for their services, but a corporation that is unfortunate enough to get into the hands of a receiver should not be considered legitimate prey for the avaricious.

"The amount of railroad mileage in receivers' hands today is greater even than in the years following the panic of 1893, and there has been no time in recent history when reorganizations were as numerous as at present. A study and comparison of some of the plans that are now being put forth would prove interesting and profitable, but this is not possible in a paper of this length.

"I will say, however, that most of those I have had occasion to examine, seem to offer temporary, rather than permanent relief. Fixed charges are reduced, assessments are levied, and various kinds of pressing obligations are paid off, but the new securities are issued in the same manner as the old, and there is nothing to prevent a repetition of the trouble in the more or less distant future."

We are very much inclined to share Mr. Blunt's viewpoint. We have witnessed too many reorganizations that do not reorganize. When a property, through financial distress, is forced into receivership, it should emerge in a new and permanent financial dress; not one hastily stitched together with patches, as it were, representing the claims and interests of the various groups of creditors

and stockholders, but rather of lasting pattern, cut to fit the particular needs of its subject.

It has been possible for some state commissions, by the exercise of friendly offices, to avert receiverships and to act as a sort of trustee for all interests concerned. In this way when a property is encumbered by several sets of mortgages on different units of the plant, and its stock apportioned in various classes, it has been possible to persuade the divergent interests to adopt some practical and equitable method of adjustment rather than to claim to the uttermost all their full legal rights to the detriment of the enterprise and therefore to their own disadvantage.

In these instances in which, to preserve the exact legal status, it would be necessary to build mortgage and stock layers, one upon the other, in such amount that the reorganized property could not prosper, some of the state commissions as friendly arbiters have been able to demonstrate to these claimants the advantage of paring down, and in some cases consolidating their equities in order that the enterprise might prosper. A smaller share in a prosperous concern is often more valuable than a big share of a tottering enterprise. The mathematics of this may be readily demonstrated. There is no alchemy by which a bale of stocks or a bushel of bonds can add an iota to a property, either in actual assets or in profits.

Of particular importance to the public is the requirement of service and any reorganization should have in mind a financial equipment calculated to make the railway of maximum usefulness. It is almost axiomatic that the quality of service will vary in exact proportion with the financial capabilities of the enterprise. Any reorganization, therefore, that leaves a carrier unregenerated financially, thereby imposes necessarily inferior railroad service on the public.

We believe, therefore, that these are properly matters to be determined, as to interstate railways, by the Interstate Commerce Commission, and we shall so recommend.

We believe that if Federal authority is to regulate interstate railroad capitalization, it should be given a freedom unrestricted by unnecessary or harmful statutory inhibition. We believe also that the carriers on their part should be equally unrestricted by rigidly fixed provision. The question of capitalization must always be a matter of discretion. It can not be circumscribed by hard and fast rule of law or method. In order, therefore, that such a maximum of freedom may exist, it is imperative that the statutory provisions as to stocks and bonds be as elastic as is consonant with good public policy. We suggest that under the system of national incorporation, which we have heretofore recommended, interstate carriers should be left free to issue common stock without par value. The state of New York has recently made this possible with good results.

Our purpose in this suggestion is to provide the interstate carriers with the ready means of acquiring new funds through other

than borrowed sources. The regulation of many of the states, which have required the sale of stock at its par value, has had the effect of forcing all public utility financing to be done through bonds. This, of course, is the very contrary of the law's intention. As one issue of bonds follows another, the indebtedness of the carrier grows out of all reasonable proportion to its assets, and at the first serious interruption of its regular revenues, it collapses.

On the other hand, if an elastic system of financing had been provided through the medium of stock issues, a temporary loss of revenues would mean merely a brief forbearance on the part of the stockholders to be compensated by additional dividends in the future. We feel that the character of stock is in some quarters not as thoroughly understood as would seem to be desirable, and we therefore refer to an illuminating discussion as to the true nature of stock in the report of the National Securities Commission of 1911.

Common stock should be issued without par value. State laws compelling a par statement of common have utterly failed of their principal object. Designed with other enactments to produce a condition where the par of stock was at least equaled by property or value supporting it, we find universal agreement that the par statement of stock is utterly misleading, and that it indicates no relation, whatever, between value and capitalization.

Without par statement the common stock would represent a proportionate interest in the residual assets, and would share in the profits after the preferred stock.

We find the Investment Bankers in agreement with this suggestion and we quote from a report on railroad bonds and equipment trusts adopted by that association at its convention last year. This report says:

"Most of the states prohibit the sale of stock by a corporation at less than its par value and therefore comparatively few of our railroad corporations are today in a position to finance any part of their requirements for betterments, improvements, or extensions other than by increase of their debt. This means a continual weakening of the margin of safety over the junior securities and unless offset in some way is sure to lead to trouble in the future as it has in the past.

"What is a share of stock but an evidence of part ownership in the enterprise and why should it have a nominal value which may in no way be related to its real or even its market value?

"The Railroad Commission of the State of California has recognized the necessity on the part of public service corporations of maintaining the equity in their property over and above their bonded debt by allowing the sale of stock, both common and preferred at prices below par, but approved by the Commission. Such practice works no hardship on the buyer of the stock or the old stockholder, but maintains for the bondholder his *pro rata* lien on the property. It is admitted that such sale of stock without par value must not be permitted except under proper supervision, either state or national.

"Contrast the credit position today of those roads which have been able to finance to a large extent by sale of stock with those which have had to sell bonds to meet all expenditures and then consider how much better

would be the position of those weaker roads, had they been allowed to sell their stock at fair prices. This is a subject where more education is needed."

This whole proposition has been so ably analyzed by Mr. Sidney Z. Mitchell, President of the Electric Bond and Share Company of New York, in a discussion before the Committee on Public Lands of the United States Senate, in December, 1914, that it may with profit be incorporated in this report to your Association. On this subject Mr. Mitchell says:

"I think a great deal of harm has been done to the credit of corporations, and in that way to business generally, by the great vehemence with which some governmental bodies have insisted that all stock be paid for at par. I believe that all advanced thinkers who have thoroughly studied this subject fully agree with me as to this. A \$100 share of stock may have been paid for at par a few years ago, and not now be worth ten cents. In the same way stocks in business corporations and also in public corporations—before the present limitations as to their earnings through commission regulation—may have been issued for ten cents on the dollar ten or fifteen years ago and may now be worth more than par. Why is there something sacred about having every share of stock marked \$100, and paid for at the rate of \$100 cash per share, and in the same breath sell bonds as low as 65 or 70 cents on the dollar? This is putting the water, if there is any water, in the wrong end. The way to keep a company in good credit, and enable it to get money cheap and plenty of it is to allow the greatest freedom in the issuance of common stocks so as to facilitate getting some equity money in the property, first, to serve as a margin for the safety of the preferred stock that is issued ahead of the common stock, and, second, so that both issues of stock—preferred and common—will make, in the aggregate, a very substantial equity or margin for the protection of the bonds. This is the plan to follow if we want to keep down the amount of bonds and preferred stock issued, and to get good prices for such issues of bonds and preferred stocks, the returns on both of which should be regarded as fixed charges and the principal of both should be redeemable at some reasonable fixed price. The old idea of building railroads or water powers wholly from the proceeds of bonds is absolutely wrong as a matter of financial economics and should be discouraged. The best way to discourage such old style finance for public service corporations is by limiting, through the present commission regulation, the amount of earnings which a company can make upon its actual investment regardless of the aggregate amount of the outstanding securities, and regardless of how the earnings are distributed as between the several classes of securities. This plan is being largely followed now and will, I am sure, soon become universal as to public service corporations, at least. This plan will force the public utility corporations to give far more study than has heretofore been done to the question of paramount importance, that is, the question of credit or how to get money for this business at the lowest possible cost; and based upon practical experience I know that the inevitable conclusion must be that the only way to do this is to put some equity behind the preferred stock and still more equity behind the issue of bonds—the greater the security the lower the yield—and allow the people who are issuing the securities the greatest freedom in the issuance of common stock.

"New York has recently passed a law authorizing the issuance of common stock without par value. The State of Virginia has recently passed a law authorizing the issuance of any amount of stock for the acquisition of property, no matter what the value may be, provided only that a majority of the directors who vote for the issuance of such stock shall sign and file,

as a public record, with the Corporation Commission of Virginia, a sworn statement showing what they consider the actual cash value of such property to be at the time the stock was issued for it. The issued stock may be \$1,000,000; the value of the property may be \$100. There is no further liability to anybody in connection with the matter if the directors file, as a matter of public record, a truthful statement as to what they consider the value of the property to be at the time. Virginia corporations issuing stock under this law have, so far as I have observed their practices, not set up the par value of any such stock as a liability on their balance sheet, but merely show on the liability side the actual capital which is put in the business just as the actual capital in the business is shown on the liability side of the balance sheet of a partnership. This is honest and fair and gives all the information needed, and doesn't mislead anybody, and it is immaterial whether the stockholders have their interest in the property represented by stock certificates aggregating a billion dollars or a hundred thousand dollars or one thousand brass checks. The same thing applies in the case of the New York corporation incorporated under the non par value law. That interests nobody except the stockholders themselves.

"I believe that the issuance of common stock without par value is bound to become universal. Bonds and preferred stock must, of course, have some par value because they are prior charges against the property, the accrued interest or accrued dividends must be paid before the common stockholders receive dividends, and in liquidation the principal of both must be paid in full before the common stockholders can get anything. I know that the aggregate par value of the securities issued by any company no longer misleads any one who studies or understands the subject at all, and I know that the amount of securities issued do not affect the rates to the people, and I know that sticking to the par value fetish sometimes does force either a receivership or the sale of bonds at ridiculously low prices, which sometimes results later in a receivership. I know that this plan forces water into the wrong end of the financial structure and greatly affects the ultimate credit of the company and therefrom retards development. I know from experience that the only time to get cheap money is when you can, and I know it is impossible to do this because of inevitable delays, if you must wait for the commissions who regulate to act upon your security issues. I am certain that the carrying out of this plan will greatly hinder and delay the financing of new enterprises in the West. I don't see how any good can come to the consumer, nor to the public generally, by carrying out this plan and I very much hope that the clause in this bill regulating security issues will be stricken out.

"If any one is afraid that courts and commissions will some time revert the present policy and will, at some future date, in rate regulation and condemnation cases, take into consideration the par value of outstanding securities, then why not kill this possibility now and for all time by putting into any lease or grant of government land for power purposes a condition that the grantee or lessee does, in any rate regulation or condemnation case, forever waive the right to ask that par value of the securities shall be considered. This is already the law and universal practice and will not in any way affect the salability of the securities, and it seems to me ought to accomplish the same purpose as is contemplated in the regulation of security issues, but without any of the embarrassing and expensive delays which must necessarily go with the regulation of security issues by commissions, especially if there are to be two—and possibly conflicting—regulating bodies."

Mr. Rufus C. Dawes, also recognized as one of the leaders of thought in public utility finance, has often expressed views in harmony with our present suggestion that the law should permit the issue of common stock without par value.

We unhesitatingly suggest that public regulated bodies should proclaim the doctrine of a wider latitude for supplemental financing. Otherwise, instead of bringing a desirable influence to bear upon capitalization, they will inevitably work mischief. A proper balance should be maintained between the fixed obligations and the equities of the stockholders. If requirements are unnecessarily rigid in relation to the issues of stock, the carriers and the public utilities will be driven to the expedient of bond and note issues in a degree that will disturb the equilibrium that sound finance requires.

On the other hand, if a ready avenue is created for the entrance of money through stock into these railroad and public utility enterprises, a system of finance will gradually be evolved which will enable these corporations to weather without difficulty storms and squalls which now leave a wake of wreckage. A stock without par value will be readily acquired by existing groups of stockholders, and experience leads us to believe that in this way the stockholders' rolls will gradually be very greatly enlarged. From this springs a singular degree of benefit to the carriers and the public utilities in that the public becomes more and more closely identified with their enterprises. Under the methods prevalent in many states today, railroads, whose stock sells below par, are unable to use it as a source of new capital. With the fiction of the par value removed, this stock will pass the scrutiny of the regulating bodies. We believe the better course at the beginning would leave to the carrier or public utility the option of issuing the present par value type or the non-par value form of common stock. The discretion of the regulating body would no doubt modify the inclination of the corporation.

We therefore offer as our proposition No. (5), the suggestion that state and Federal statutes be amended where necessary to permit of the issue by railroads and public utilities of common stock without par value.

Any control of capitalization must be predicated primarily upon findings of value. We take it, therefore, that Federal control over stocks and bonds would be very intimately concerned with the valuation work which the Interstate Commerce Commission is now carrying forward. These valuations in so far as they have to do with completed railways, will form a basis by which to measure the existing capitalization of such railways. It will be the beginning from which the future authorization will proceed. Obviously the regulating authority will be unable to determine whether new stocks and bonds shall be issued until it knows that the existing stocks and bonds are not unreasonably out of proportion to the value of the property upon which the new issues are to be authorized.

In the issue of new securities, care should undoubtedly be exercised that they rest upon tangible assets. It is clear, we believe, that in so far as new stocks and bonds may be authorized for additions and improvements to existing railway or public utility



properties, they will be issued to cover the cost of such additions and improvements. Here the regulating authority will be faced with a new responsibility. It will be incumbent upon it to determine that the cost, to be represented by the stocks and bonds, is at least reasonable and not unfair.

In the performance of this duty the regulating agency could, under our system as it exists today, look but little further than the estimates submitted by the carriers and the usual estimates of cost of similar undertakings. We do not believe this is sufficient.

While the issue of stocks and bonds under Federal authority would in no degree entail a government guarantee, it is nevertheless essential that Federal authority should not permit an issue of stocks and bonds to remain outstanding for fifty years, at least, and perhaps indefinitely without a very firm assurance that they are in proper proportion to the fair cost of the property which they represent; not a momentarily and seeming fair cost, but an actual fair cost.

We do not mean to be understood as impugning the good faith of the responsible railroads and their officials but we do believe there are circumstances which it would be improper for us to overlook.

We need but to recall that the city of Boston found its freedom of purchase denied in the steel industry, under the so-called New England Agreement. It was with the greatest difficulty that Mayor Baker, of Cleveland, now Secretary of War, was able to obtain equitable bids for equipment for Cleveland's municipal electric plant.

Mr. Charles S. Mellen, at one time President of the New York, New Haven and Hartford Railroad, who had some experience in matters of this sort, put the case bluntly when he said, in reference to railroads:

"Too often the board of directors of our corporations, in handling the business of stockholders, are like some board of aldermen or the members of the legislatures in our cities or states. They do not represent the stockholders at all. They really represent and are under the control of bosses entirely outside who make enormous profits through their control of the railroad in outside business.

"I would also compel the railroad managers", said Mr. Mellen, "to advertise for bids for all purchases of any considerable amount and for all construction work and other work which involves a large expenditure."

To this Mr. Mellen added—

"The cry against public ownership will vanish in the air when once opportunity for making profit out of concessions, so to speak, of the business is gone."

Mr. Mellen presented but one side of the case. It undoubtedly happens just as frequently that the large transportation companies are obliged against their will to pay excessive or exorbitant prices for the materials they use. And as long as the regulating au-

thorities must accept these prices and proceed upon the premise of a fair return upon the value of the property, it may regulate railroad rates and railroad capitalization from now until the tolling of the bells and it will never fully solve the problem it has undertaken.

Nor do we believe that it is wholly fair for the state to deny to regulated enterprises and to their stockholders the measure of protection which the state could readily grant.

Referring for the moment to railway enterprises, we find them dependent upon their purchases chiefly of steel, lumber, fuel and finished railway equipment. Now it is apparent that either of two conditions could easily arise to thwart the true purpose of regulation. We may readily conceive of a situation whereby an irresponsible railroad management may, through its interest in a steel company, a lumber company, a fuel company, a locomotive or car equipment company, impose such price exactions upon the railway as to draw out at the source the unreasonable and illicit profits which it is the purpose of regulation to prevent. In such a case, of course, the illicit fees will come from the rate payers. The unduly high prices paid for materials would enter into the "fair value of the properties" upon which the regulating body would be bound, under the supreme law of the land to allow a reasonable return.

There is a second method by which the same result might be accomplished by methods now regarded as perfectly legitimate. A monopolistic industry could impose unfair prices upon a carrier which it would be bound to accept and upon which it would thereafter be entitled to collect a reasonable return in rates from its patrons. The price of steel, fuel or equipment, for instance, might be very seriously questioned by the carrier, but under our present system it would have scant redress. We believe that the present Federal Trade Commission has potentialities which may offer a complete solution for the difficulty we are here discussing. That commission has wide powers of investigation and it might readily come within its province to report to the Interstate Commerce Commission as to the reasonableness of the prices charged by any industry upon which the carriers or public utilities must rely in large measure for their essential materials.

It would seem to be entirely feasible that the Interstate Commerce Commission call to its aid the Federal Trade Commission, when it has reason to believe unreasonable prices are being exacted for any of the essential materials of railway usage. To the same degree the state commissions could invoke the assistance of the Federal Trade Commission as to materials employed in public utility construction.

We urge, therefore, as proposition No. (6) that the Interstate Commerce Commission and the state public utility commissions be permitted to invoke the aid of the Federal Trade Commission

to determine the reasonableness of the cost of essential materials of railroad and public utility construction.

It is abundantly desirable, if any of these industries are now subject to monopolistic control in a way to make public utility costs unreasonable, that the situation be adjusted before Federal authority shall have authorized the issue of large quantities of stocks and bonds, predicated upon the cost of such materials.

We pass to a consideration of the industrial difficulties which beset the carriers and public utilities. If the Interstate Commerce Commission is to pass upon the issues of securities, no effort should be spared to assure continuity of service and therefore a uniformity of revenues upon which the value of these securities must depend. We believe, therefore, that a method should be found to adjust the industrial problems of the carriers and the public utilities so that adequate wage scales commensurate with our American standards be instituted and readjusted from time to time, and this, if possible, without breach of relationship between the corporate enterprises and their employes.

The public can afford to pay rates which will admit of not a meager wage competence, but a generous wage allotment calculated to bring about the highest degree of satisfaction, comfort and efficiency of the railway and public utility employe. It is our view that the regulated industries wherein the power of government is exerted, should become models as to wage scales and all that goes to make up a proper relationship between employer and wage earner. We have no particular system to recommend. This matter has of late been so thoroughly thrashed out before the American public in the recent controversy between the four great brotherhoods and the railway executives that all who apply themselves to railway problems know its every detail.

The best thought of the nation to-day urges a form of arbitration or adjustment. This may be accomplished either by voluntary agreement between the carriers and their employes, or by the intervention of governmental authority. We believe that either one of these two systems, or perhaps a combination of both, may be evolved to meet such situations as shall arise hereafter. It is apparent that the carriers suffer no loss when the full amount paid by them in wages is taken into account in fixing their rates. This, of course, has been the universal practice and we see no reason for any departure therefrom. In fact it is to us so axiomatic as not to be debatable that whatever wages a carrier or public utility may establish shall be charged as part of the rate which the patrons of the carrier or public utility must pay. There is no other way. There has been so much confused writing and confused thought on this subject that the truth can not be too clearly set forth.

It is our belief that a method may be found which would require a voluntary system of arbitration as between the employers and wage worker, and at the same time would repose in govern-

ment the authority in certain emergencies in the regulated industries to fix and determine scales of wages and hours.

We therefore offer as No. (7) the proposition that provision be made for voluntary wage agreements and methods of arbitration and for government intervention in emergencies to fix wage conditions.

We have heretofore referred to the benefits to flow from an enhanced railroad credit. The carriers have stood first among the industries in the strength and rate of their first mortgage bonds. Amendments to our banking system, and most commendable amendments they are, have been designed to enlarge the credit sources of the merchant, manufacturer and the farmer. No similar enactment has been evolved for the railroads or public utilities. In fact, unusual circumstances have placed the carriers and the public utilities in a less advantageous position than they formerly occupied.

The foreign loan has invaded our American financial system. It is a newcomer but it has appeared in such volume as to create a very distinct impression. The Argentine Republic, Switzerland, Canada, Great Britain, France, Germany and Russia have sought this market for their borrowings and with such success that they have absorbed American investments within a two-year period approximating \$1,500,000,000. These loans have been at rates varying from 5% to indefinite figures, fluctuating with the basis of exchange. Is it likely, therefore, that if foreign countries are to be permitted to absorb our capital at rates from 5 per cent upward, our carriers will long continue to find a market for their securities at 4, 4 $\frac{1}{4}$  and 4 $\frac{1}{2}$  per cent? Can we play pawnbroker at 12 per cent and 15 per cent, and banker to our railways at 4 $\frac{1}{4}$  per cent? Is there no point at which it becomes the duty of government to extend the policy of the protective tariff to the safeguarding of the vital industries of the nation? What profiteth it if our protective tariff builds up our factories and farms, if a counter discrimination neglects the railroads which must carry their products? If the policy of the protective tariff is sound for industry, is it not equally sound for the railroads?

How short-sighted is our policy which eagerly grasps the excessive interest for foreign exploitation and neglects the commercial interest of home financing. We have a great big country to develop, but we cannot develop it by lending our money on doubtful security for foreign industries.

We suggest that government have an eye toward the proper maintenance of the home credit of our carriers and public utilities against the competition of the foreign loan for purposes of private exploitation beyond the seas.

We offer therefore as our Proposition No. 8 the suggestion that government safeguard the legitimate credit of its interstate carriers and public utilities, first by making domestic resources more readily available to them; and second, by protecting them against the competition of foreign loans for purposes of private exploitation.

I take it that we are all in accord in the sentiment that so important an industry as transportation and so vital a thing as its bonds and stocks, which are indissolubly intertwined with our financial system should not be subjects of controversy and uncertainty. They ought, of course, to be settled and steadfast institutions. It is our hope that some of the remedies we have urged will be efficacious in reducing the present issues to a minimum. We are conscious, however, that they can do no more than alleviate the present situation. They are not magic curatives. We believe they should be given such trial as they may merit. They will give us the benefit of an enlightened experience which we now lack. They will at least correct many of our obvious deficiencies.

It is not our province to cast far into the future, but we do believe we would be unmindful of our duty and our opportunity if we did not indicate wherein certain facts as old as humanity are yet to be reckoned with before the transportation problem shall pass from the realm of ever recurring issues.

Apparently we are not alone in the view that the time has come for a searching of the economic soul. A Federal Commission is about to begin to take testimony on the issues of railroad regulation and public ownership.

The evidence is not furnished alone by those who, from without, have sought to compose the differences which now disturb our economic life. It comes also from the men most intimately engaged in the operation of the railways. Mr. E. P. Ripley, President of the Atchison, Topeka and Santa Fe Railway, has time and again sounded a note of pessimism and of warning. Illustrious leaders in railway management concur in his view that the conditions of to-day cannot, with safety and satisfaction to the nation, long endure. The disagreement comes in the remedy.

Mr. Charles S. Mellen, formerly president of the New York, New Haven and Hartford Railroad, believes a readjustment in the present relationship imperative and ultimate government ownership inevitable.

"If public confidence were once restored to our railroads", said he, "and our public bodies charged with the duty of regulating them also were to enjoy public confidence, there is no reason why their securities could not be as safe as the securities in the savings banks, and when as safe as that, the difficulty in selling the securities would be gone."

But all the reforms he suggested did not dissuade Mr. Mellen from his view that public ownership was fast approaching.

"In company with a great many other men in big business", said he, "I have long believed that public ownership was inevitable. I did not think, however, it was coming so fast as it seems to be approaching now. You would be surprised to know how many men in the conservative walks of life secretly believe that public ownership must come."

Mr. Newman Erb, as president of the Minneapolis and St. Louis and several other railways, has also expressed the view that the nationalization of our interstate carriers is bound to come. He put it on the ground of a necessary rescue of the railways from the situation in which they found themselves in 1914.

We could quote at length from this source but may classify this viewpoint into three divisions. There are: first,—the largest group, which believes in the individualistic free play of the railways unfettered by legislation; second, a smaller coterie usually chastened by sad experience, who regard public ownership as desirable and inevitable; and third, a still smaller number who believe that a solution may still be found in an extension of governmental interest and influence in railway affairs without public ownership.

This last viewpoint is expressed by Mr. B. F. Yoakum, for many years president of the St. Louis and San Francisco Railroad. We quote from a letter of Mr. Yoakum to Judge Clements of the Interstate Commerce Commission, written in December of 1914:

"I am in favor of a form of Government copartnership, as distinguished from Government ownership.

"I believe that copartnership arrangements under special Federal charters to be granted to railroads desirous of operating under a Federal license would be the wisest solution of the present unsettled conditions.

"Taking all the requirements of the 250,000 miles of railroads in the United States for the next ten years, including larger and better facilities necessary to satisfy the public, purchase of new equipment, extension of terminal facilities, double tracks, safety signal appliances, reduction of grades, payment of car trust certificates, taking care of note maturities, bond refunding purposes, etc., the railroads will need not less than \$750,000,000 a year. This does not include new construction. When the general situation improves the railroads will be able to borrow some of this needed money at from, say, 5 to 6 1/2 per cent.

"The cost of money is just as much an expense of transportation as the cost of coal, ties, rails or other material used in the construction, maintenance and operation of railroads, and indeed, is one of the largest items of expense the railroads have to contend with.

"The Government pays only 3 per cent for the money used in the construction of the Panama canal, which is rapidly becoming an important factor in transportation. The canal would never have been built without Government credit and consequent cheap money. The United States has also authorized and is now preparing for the construction of a railroad in Alaska. I recognize that the canal is a good and wise investment, and that the Alaskan railroad will be equally as good for the development of that new country. In these two enterprises the Government lends its credit for construction work, and shoulders the deficit until they become self-sustaining. Regardless of any losses, the public is the gainer. The 3 per cent bonds sold for the construction of the Panama canal, and to be sold for the construction of the Alaskan railroad, furnish good low-rate security for small investors, savings banks and like institutions.

"The Federal Government is now regulating the expenses and revenues of railroads. It should go a step further and safely aid them in future financing, and in consideration thereof, enjoy a share of the profits with representation on the board of directors."

We are fortunate in the precedents offered in the history of street railway activities in America. Private ownership, with

varying degrees of exploitation and misfortunate, made the street railway problem a municipal issue in every large city of the country. In San Francisco it has brought public ownership. In New York, Boston, Kansas City and Chicago it has evolved a co-operative system in which the municipality and the private corporation pool their interests.

The history of railroading is fast following the course of the street railways. We do not believe that public opinion will yield to an unfettered railroad individualism. Neither will public opinion permit of the unjust injury to the great service corporations. If public regulations, modified and improved, can not meet the present issue and compose the railway problem; then the next step must inevitably be a larger exercise of governmental authority. It may well take the form of a system of cooperation such as has been worked out between the municipalities and the street railways in Kansas City or Chicago.

We do not here recommend that such a course be pursued. We do, however, believe that the time is proper for further research, and we therefore suggest that this Association create a special committee to inquire earnestly into this subject. Such a committee, we believe, should consider the whole field of the relationship between government and the railroads. This committee, we take it, would endeavor to report to your Association some general form of procedure or agreement under which government and the privately owned railways might fully cooperate toward the ends which both should desire to attain. This committee might well undertake an inquiry into the adjustment of street railway problems in Kansas City or Chicago.

It is of course obvious that if government, directly or indirectly lend its aid or influence toward railroad welfare, it should share in the compensating profits. The mere entrance of government into such a plan would so stimulate railroad credit that increased profits would automatically follow.

Within the next four or five years, and perhaps sooner, the Interstate Commerce Commission will have completed the valuation of the principal interstate roads. When these figures have been adjusted to an equitable basis, the principal work will have been completed for a cooperative determination of the whole railroad question in America. The fair valuation will form one of the elements upon which rates will be predicated and the way will therefore lie open for a possible extension of government interest in transportation with small degree of risk.

In the street railway settlements the beginning was made with an agreement upon the value to be assigned to the properties. Thereafter a certain rate of return was assured to the owners of the properties, and any amount in excess of that return was divided between the street railway company and the city. The fund which thus accumulated for the benefit of the municipality was in some cases made available for the purchase of an interest of

the railway properties and in other instances for the construction of new lines to be operated by the private company.

When a valuation has been set upon the interstate carriers, if the United States government should elect, it could enter into an agreement with these lines by which it would assure them a given rate of return; and the rates could then be adjusted under national authority to yield something in excess of that return. The balance would be properly divisible between the carriers and the government. The share thus accruing to the government would be available for the gradual acquisition of an interest in the lines or for the construction of strategic roads essential to industry and national safety.

Of course such an arrangement would so vastly improve railroad credit that future borrowing could be effected on highly advantageous terms with resulting benefit to the carriers, the shippers and the government.

Such a system of cooperation could not fail to remove the railroad question from the domain of political controversy which it now occupies. The adjustment of rates would be simplified as the processes here outlined provide an automatic measure of regulation. Such a method would enable the government to develop a rate schedule suited to its national needs; fashioned to the requirements of its industries and its people, with only secondary regard for some of the arbitrary requirements that must now prevail.

The transportation industry is so vast that the matter of only one-half of 1 per cent upon the outstanding stocks and bonds would work a difference of \$75,000,000 annually. A 10 per cent. increase in gross earnings would amount to \$300,000,000 annually.

The students of public ownership will of course be quick to discern herein a gradual method by which, with wise administration, their purpose could ultimately be attained.

In any study of cooperative railway administration, an extreme caution is essential to avoid the pitfalls into which some of the best intentioned street railway resettlements have been plunged. We repeat that our discussion of this subject has for its purpose merely the recommendation that this Association appoint a committee to give earnest consideration to the formation of a more satisfactory relationship between government and its interstate carriers.

We have herein outlined our views at some length on the subject assigned. We feel very earnestly that the obligation is upon your Association to assume the leadership in the effort to find the light. This thought has prompted us to seek widely and deeply. It was our view in undertaking this work that it was only worth while if it could be done in a way to be permanently helpful. It is not enough to meet the passing issues of the moment.

In conclusion we herewith summarize our views and present the following recommendations:



- (1) That the Interstate Commerce Commission be given power to regulate the stocks and bonds of the interstate carriers.
- (2) That the Interstate Commerce Commission or some other Federal agency be empowered to regulate the rates, practices, stocks, and bonds of the interstate public utilities.
- (3) That Congress enact the necessary legislation to provide for a national incorporation act for interstate railroads and interstate public utilities.
- (4) That the Interstate Commerce Commission be empowered to exercise jurisdiction over mergers, consolidations and incumbrances of interstate railroads.
- (5) That the Interstate Commerce Commission be given authority to exercise jurisdiction in receivership proceedings, preferably to the fullest extent, but at least over all matters relating to capitalization.
- (6) That Federal and state statutes be amended, where necessary, to permit of the issues by railroads and public utilities of a common stock without par value.
- (7) That the Interstate Commerce Commission and the state public utility commissions be permitted to invoke the aid of the Federal Trade Commission to determine the reasonableness of the cost of essential materials of railroad and public utility construction.
- (8) That adequate legislation be enacted, both national and state, to provide for voluntary wage agreements; methods of arbitration; and for Federal and state intervention in emergencies, to adjust wage conditions in the railroad and public utility service; nothing contained in such legislation to require men to work against their will.
- (9) That such legislation as is consistent with the public interest be enacted for the enhancement of railroad credit and for the protection of American railroads against the competition in the American market for funds for private exploitation in foreign countries.
- (10) That a new committee be appointed by this Association to study the question of the relationship between government and the railroads, to consider the possibilities of cooperation between the government and the railroads, and to report to this Association at its next annual meeting.

We wish to express our appreciation for the valuable assistance of Mr. Paul A. Sinsheimer, stock and bond expert of the California Railroad Commission, in the preparation of this report.

EDWIN O. EDGERTON,  
*Chairman.*  
JOHN F. SHAUGHNESSY,  
WILLIAM C. BLISS,  
PAUL B. TRAMMELL,  
\*CLYDE B. AITCHISON.

\*Concurs in part. Joins with the purpose of bringing the report before the convention.

I concur in the recommendation for Federal control of the issuance of railway securities.

JUDSON C. CLEMENTS.

Mr. EDGERTON, of California. Mr. President, realizing that there are some suggestions in this report that might be considered valuable, I move the adoption of the report.

Mr. MILLS, of Minnesota. Mr. President, I move that the Committee be thanked for the pains they have taken in preparing this report and submitting it to the Convention, and further that it be placed on file.

The PRESIDENT. We have now two motions before us. I take it there may be some discussion of this matter, and in view of the lateness of the hour, I wonder whether it would not be wiser to adjourn until 10 o'clock tomorrow, at which time we have a special order, and another special order for 11. In due course the report of this Committee, and such unfinished business as we have, may be taken up.

Mr. HALL, of Nebraska. In saying what I am going to say I want to express my high appreciation of the work that has been done in preparing that report, but it runs contrary to some things which the Convention did in 1914, if I understand the report. If we were to print it without adopting it, and should leave the recommendations of the Committee on Capitalization for the following year, it would give the rest of us an opportunity to familiarize ourselves thoroughly with that report. There are a good many things in there that I would not want to vote for, and I would not want to vote against them at this time either, but the report will be open for discussion tomorrow. You will not get very far with it, because it would consume another day to discuss that report.

The PRESIDENT. We have one special order at 10 o'clock which will take precedence.

Mr. HALL, of Nebraska. And if that report is discussed, it will take possibly an entire day. If it were printed and referred back to the Committee, then during the year we could familiarize ourselves with the report.

Mr. TAYLOR, of Nebraska. Do I understand that there is a motion that the report be received and filed?

The PRESIDENT. We have two motions. That is one of them. We have two motions and one suggestion. Shall we proceed further at the present time?

Mr. ELMQUIST, of Minnesota. I move that we adjourn until 10 o'clock tomorrow morning.

The motion was agreed to.

Whereupon, at 5:15 P. M., November 15, 1916, an adjournment was taken until November 16, 1916, at 10 A. M.

### THIRD DAY'S PROCEEDINGS.

Washington, D. C., November 16, 1916, 10 A. M.

The Convention resumed its session.

### RAILROAD RATES.

President THELEN. A special order was set for 10 o'clock this morning, being the report of the Committee on State and Federal Legislation. That Committee will report within a few minutes. It occurs to me that we may very advantageously fill in the intervening time by taking up the report of one committee which was passed by because the report was not then in print. That is the report of the Committee on Railroad Rates. We have before us as unfinished business the report of the Committee on Capitalization. Is there any objection, Mr. Commissioner Edgerton, to deferring that for the purpose of listening to the report of the Committee on Railroad Rates?

Mr. EDGERTON, of California. There is no objection at all on the part of our Committee.

The PRESIDENT. Then if there is no objection we will take up the report of the Committee on Railroad Rates, of which Commissioner Stutsman of North Dakota is Chairman.

Mr. STUTSMAN, of North Dakota. Perhaps I ought to make an explanation before I read the report. Governor Yates thought he had invented the scheme of getting somebody else to help him do the work. That was not original however with him, because I resorted to the same method in preparing this report, although I did not call upon the other members of the Committee. This is the Committee on Rates, and inasmuch as our Commission have a rate expert, whom we employ and pay by the year, I felt that I was at liberty to use his services; and I am largely indebted to our Mr. Little, who is here present with us, for some of the analyses of rate matters.

I will say that this report was prepared so late that it was impossible to get replies from the other members of the Committee, and only one member has answered the letter I wrote,

asking for criticism regarding it. The reason why it was so late is perhaps unique. Last spring a farmers' organization decided that they did not want me for railroad commissioner any more in North Dakota, and they failed to renominate me for this office, and I lost interest in the situation for a while. It was only along during the latter part of the summer that I realized that the subject was of sufficient interest to continue my efforts along that line, so I woke up and started over again. The report is as follows:

The American system of railroad rate making, as a whole, is distinguished by adjustments of commodity rates, distributing class rates, classifications and exceptions thereto designed to facilitate the manufacture and distribution of commodities in and between the various parts of the United States.

The history of the development of this rate system which has given large cities with favorable natural locations exceptionally low rates with attendant concentration of manufacture, distribution and, consequently, population is too familiar to bear repetition here. This building up of favored communities and producers has been justified by the carriers as an unavoidable consequence of competition by rail, water or rail and water carriers which produced conditions at such cities which were entirely different from those simultaneously existing at other cities in the same general territory.

After a storm of criticism and extended investigation, the Federal Government sought to relieve the situation by enacting the Act to Regulate Commerce which empowered the Interstate Commerce Commission to hear complaints as to interstate railroad rates, or investigate such rates on its own initiative without complaint, and after such hearing and investigation, to determine a just and reasonable rate, regulation or practice to govern the interstate commerce involved and to order the carrier to desist from charging any rate or maintaining any classification, regulation or practice affecting rates which results in unjust discrimination as between persons or places similarly situated; and in connection with the latter provisions Congress enacted the long and short haul clause as a guide for the Commission in considering the discriminations arising through charging higher rates for short than for long hauls over the same line of road.

The majority of the states finding like problems within their borders, enacted similar laws empowering Railroad or Public Utility Commissions to exercise the same powers as to intrastate railroad rates, classifications, regulations and practices, as the Interstate Commerce Commission has in the field of interstate rates.

In addition to the provisions for a regulatory commission many of the legislatures of the western states fixed maximum rates for the carriage of freight and passengers by statute while other

states provided that the railroad commission should make a reduction in all freight rates of at least a certain percent fixed by the governing statute. Other states required the railroad commission to fix uniform maximum freight rates and classification provisions for statewide application within a period of time fixed by the legislature. In some cases the legislature fixed commodity rates and the railroad commission established class rates—two supplementary actions providing maximum class and commodity rates for the entire state.

The notable feature of state regulation has been the statewide applicability of the rates enacted by the legislature or prescribed by the railroad commissions of the various states and especially the western and mid-western groups of states, and substantial progress in the solution of rate making problems has resulted from these state activities.

It was in connection with the exercise of state authority that the line of judicial decisions known as the Granger cases (*Munn v. Illinois*, 94 U. S., 113, *C. B. & Q. Ry. Co. v. Iowa*, 94 U. S. 155, *Peik v. C. & N. W. Ry. Co.*, 94 U. S., 164) fairly established beyond question, the right of the public to regulate the charges of common carriers through the agency of an administrative commission. These decisions formed the legal basis for the enactment of the Act to Regulate Commerce.

The attempted exercise of the rate making power of the Nebraska Railroad Commission gave us the oft quoted standard of reasonableness applied to freight rates in *Smythe v. Ames* (169 U. S., 466; 18 Sup. Ct., 418). Differing opinions as to the "fair value" of railroad property as defined in that case and as applied in the Minnesota Rate Case and related cases, as well as litigated cases before the Interstate Commerce Commission, brought about the passage of the present federal law (Act to Regulate Commerce, §19a) which seeks to establish the factors of "fair value" so defined. Many of the state railroad commissions are co-operating with the Interstate Commerce Commission in this valuation work and a committee of this association has devoted much time and energy to the consideration of the tremendous economic questions involved. If this undertaking is to be of any value to the public commensurate with the outlay of money involved, the results found must become the basis for determining the reasonableness of rates brought in question on formal complaint or sought to be advanced by the carrier. The work being accomplished along these lines is the subject of the report of the Committee on Valuation and need not be further referred to here.

Return on property and cost of service must become increasingly important factors in determining rates in the future by reason of the decision of the Supreme Court of the United States in *Northern Pacific Ry. vs. North Dakota*, 236 U. S., 585; 35 Sup. Ct., 429. In this case Justice Hughes held that the legis-

lature of the State of North Dakota had exceeded its constitutional powers in fixing a schedule of rates on lignite coal which paid operating expenses and taxes but did not contribute a substantial margin of profit toward the payment of interest on bonds and dividends on the capital stock or some other measure of the value of the property even though it was conceded that the earnings of the entire traffic of the state were sufficient. The theory of adequacy of profits over "out of pocket costs" was specifically rejected by the Court as was the proposition that consideration of public policy in fixing such rates on a classification basis similar to "what the traffic will bear" justified the maintenance of a schedule which repaid cost of operation, taxes and a nominal return on the property used.

The progress which has been made in cost accounting as applied to specific rates or schedules of rates for local or statewide application is based largely on the work of the Railroad Commission of Wisconsin commencing with the Buell Case and the litigation surrounding the Minnesota Rate Case (33 Sup. Ct., 729) and other state cases of a similar nature. While it is true that through lack of funds to provide the necessary organization, many state commissions have been compelled to follow the old cut and dried method of rate making based on comparisons and percentage reductions in rates, an increasing number of state commissions have been actively applying cost of service data as a guide in rate making.

In an effort to wipe out state regulation of rates, the carriers contended in the Minnesota Rate Case that any basis of rates fixed by the state, different from the interstate rates simultaneously in effect, constituted an interference with interstate commerce which was unlawful as a violation of the anti-discrimination clause of the Act to Regulate Commerce. In this case, Justice Hughes, speaking for the Court, held that any difference between interstate and intrastate rates created by action of state authorities could not be condemned as an undue interference with interstate commerce until the Interstate Commerce Commission had considered the matter and determined that an unjust discrimination against interstate commerce actually existed.

A brief synopsis of the Shreveport case (*Houston & Texas R. Co. v. United States*, 234 U. S., 342; 34 Sup. Ct., 833) may not be out of order in this connection. On the complaint of Shreveport shippers that the carriers were collecting higher commodity rates on interstate shipments from Shreveport into Texas than from Dallas and Houston to Texas points eastward towards Shreveport of equal distance, the Interstate Commerce Commission ordered the carriers to desist from these practices. The order did not necessarily require the carriers to increase the intrastate rates involved since the same results could be obtained by reducing the interstate rates. However, on appeal by the carriers,

the Commerce Court held that the carriers could comply with the order by increasing the intrastate rates, notwithstanding these had been fixed by the railroad commission of Texas. On affirming this decision the Supreme Court used the following language:

"That an unjust discrimination in the rates of a common carrier, by which one person or locality is unduly favored as against another under substantially similar conditions of traffic, constitutes an evil, is undeniable; and where this evil consists in the action of an interstate carrier in unreasonably discriminating against interstate traffic over its line, the authority of Congress to prevent it is equally clear. It is immaterial, so far as the protecting power of Congress is concerned, that the discrimination arises from intrastate rates as compared with interstate rates. The use of the instrument of interstate commerce in a discriminatory manner so as to inflict injury upon that commerce, or some part thereof, furnishes abundant ground for Federal intervention."

The substance of this decision, then, is that Congress, and, by delegation, the Interstate Commerce Commission, has power, under the constitutional authorization to regulate commerce among the several states, to fix the relation which should exist between a state and an interstate rate, and when this has been done the state rate must be adjusted according to the relation so fixed.

While the members of the state commissions and many others jealous of the rights of each state to manage its own internal affairs, were not concerned with the quarrel between Louisiana and Texas, and might have been willing perhaps to concede that the state rates in this instance were much too low and were purposely made so by Texas authorities, in order to gain an advantage, unfair or otherwise, over Louisiana shipping points, yet they felt that the principle of law announced in this decision would prove disastrous to their contention for the right to control local transportation facilities. The decision was rendered in June, 1914, and at the forthcoming meeting of this association in November of that year, Commissioner Williams, of Texas, then Chairman of the Committee on Amendment of the Act to Regulate Commerce, offered, as part of the committee's report, a resolution calling for an amendment to section one of the Act, which was finally adopted as follows:

"And, provided, that nothing in this act, nor the exercise of any authority by the Interstate Commerce Commission by virtue thereof, shall absolve any railroad or other common carrier from obeying any rate, rule, regulation or practice of any State with respect to the transportation of passengers or property, or the receiving, delivery, storage or handling of property wholly within one State and not shipped to or from a foreign country, from or to any State, or territory as aforesaid, unless and until there shall have been a judgment of a court of competent jurisdiction holding such rate, rule, regulation or practice imposed as aforesaid, to be unreasonable and unlawful."

In discussing the Shreveport case and the necessity for the adoption of this resolution, Commissioner Williams used some strong language, for instance:

"I beg to interject here a protest against the suggestion that there is a declaration by the Interstate Commerce Commission that the State rate is too low. No such declaration was made. There was no such finding by the Interstate Commerce Commission in the Shreveport case, and all intimations to the contrary on the part of the appellate court are founded on an erroneous impression of the record which was before them.

"State regulation of railroad rates within state borders began with the beginning of the construction of railroads and has continued ever since. It has had the practical recognition, time after time, of every department of the Federal and State governments. The growth and increase of our internal commerce is bound up with the exercise of this power, which has not been found in experience fatal to our development, but which has been continuously exercised concurrently with the most enormous increase in internal transportation that the world has ever known.

"This power no longer exists. There has been no amendment of the Constitution; there has been no change of the Federal law except one which to the ordinary mind carries with it an express disclaimer of all intent to interfere with the regulatory powers of the states over transportation between points within their borders. There has been no change whatever except in the opinion of the Justices of the Supreme Court of the United States. But a change in the law has been effected which more materially makes for centralization, and for the death of the states as political bodies than anything which has happened heretofore in our history, not even excepting the collapse of the Confederate government and the termination of the Civil War.

"As was said by the Supreme Court of the United States in the Minnesota rate cases, 230 U. S., 417,

"To say that this power (the power of state regulation) exists, but that it may be exercised only in prescribing rates that are on an equal or higher basis than those that are fixed by the carrier for interstate transportation, is to maintain the power in name while denying it in fact."

"This maintenance in name and denial in fact is the situation which has been brought about by the Shreveport rate case."

On the other hand, Mr. Farrell, who had been counsel for the Interstate Commerce Commission throughout the progress of the litigation, and who had been permitted to express the views of the members of the Interstate Commerce Commission in the discussion, stated in part:

"Before any railroad company can increase a State rate, made by a State Commission, the Interstate Commerce Commission must determine the reasonableness of the interstate rate with which the comparison has been made, but it must go further. It must examine the circumstances and conditions surrounding both the interstate and the State transportation and ascertain whether as between the State traffic and the interstate traffic there is in fact substantial similarity. Now, while the Interstate Commerce Commission might decide that the interstate rate should not be more than an amount stated, and the State commission might decide that a State rate should be not more than a certain amount, and the State rate for the same number of miles might be less than the interstate rate, it would not follow that the railroad company would have a right, in complying with the order of the Interstate Commerce Commission, and it would not follow



that that Commission itself would have the right, to make an order requiring the carrier to remove the discrimination that existed between the two, because that would be laying only a part of the foundation that it is necessary for the Interstate Commerce Commission to have in order to make a requirement which the carrier can, under the Supreme Court decision, comply with by ignoring the order of the State commission and raising the State rate.

"The Shreveport decision does not give the carrier any right to raise the State rate until after the Interstate Commerce Commission has found that the interstate rate should be no more than a certain amount, found that the transportation to which the interstate rate applies is performed under circumstances and conditions substantially similar to those surrounding the transportation to which the State rate applies, and then pronounced the discrimination between the two to be undue. Then, if I understand correctly the Shreveport case, the carrier may ignore the State order and raise the State rate. The Interstate Commerce Commission must find the circumstances and conditions to be substantially similar, and fix the reasonable interstate rate, before any interference with the State rate by anybody except the State authority can possibly take place, and, of course, the Interstate Commerce Commission cannot operate directly at all upon the State rate.

"My firm conviction, from a deep study of the subject matter, is, that if you can bring about exactly what I understand you wish to have done, it will be a great detriment to effective regulation, not only of state but also of interstate rates. Suppose for the sake of the argument it be admitted that there has been within a State a rate made for the purpose of favoring the people of that State, on grain or some other traffic of consequence to the shippers of the country, and there has been a corresponding interstate rate made which is much higher. The Interstate Commerce Commission has fixed the interstate rate and prohibited the carriers from going beyond a certain sum which it has fixed as reasonable. The state authority has fixed the state rate, and said that a less sum relatively speaking for the state transportation was reasonable. There is beyond question, in a case of that kind, what might prove to be a very harmful discrimination as between the interstate shipper on the one hand and the state shipper on the other. Now if the Interstate Commerce Commission, on complaint filed in a case of that kind, has no power to remove that discrimination, which may in fact be very unjust, it is of course true that no tribunal in the world can remove it. In cases of that kind, with the bars thrown completely down, is it not human nature for different state commissions, operating primarily in the interest of the shippers of particular states, to undertake to get for shippers of state traffic advantages over shippers of interstate traffic? Is it not certain also that the extent to which one state can thus secure an advantage over another depends upon its ability to control interstate traffic by operating upon state rates?"

Mr. Finn, of Kentucky: "Is it not a fact that many states had legislation to regulate intrastate rates before the Federal government ever attempted to regulate interstate rates; and is it not a fact that the evils which you complain of which might occur, unless Federal authority is exercised over intrastate rates, did not occur when the Federal government had no authority to regulate any rates?"

Mr. Farrell: (Continuing) "If I understand Mr. Finn's question, his view is that because no great harm has come in the past from the opportunity to discriminate, mentioned, the same thing would be true in the future if a like opportunity were presented. Now it is true that previous to the Shreveport case no great amount of harm had been done. Some individual injury had occurred, but the absence of harm resulted from two facts: First, the federal institution did not know whether it had the

authority it exercised in the Shreveport case, and second, the state commissions did not know whether they had authority to operate in such a way as to interfere with interstate traffic. But, in my opinion, if definite action, depriving the Interstate Commerce Commission of the authority it exercised in the Shreveport case, were taken, the discriminations under consideration would increase in number and importance, chaos would exist, and the states injured by the discriminations would have no tribunal to which they could appeal for relief."

Hence it may be said, though no action has been taken by Congress in response to this resolution, that the position of this association is that, before any state rate shall be struck down by reason of its relation to an interstate rate, there should first be a finding by a competent court that such rate is unreasonable and unlawful.

In order to show the effect of the Shreveport case upon the state control of local rates, let us now make a brief study of the subsequent decisions of the Interstate Commerce Commission, both in the Shreveport-Texas cases and in the Nebraska-Missouri River rate cases recently decided.

In the last Shreveport decision, 41 I. C. C., 83, decided July 7, 1916, complainants in the earlier cases sought to extend the findings of the Interstate Commerce Commission to all traffic moving under either class or commodity rates from Shreveport to the entire state of Texas.

This case differed from the earlier Shreveport cases in that the issues made involved a very large proportion of the commodity rates which move both the intrastate and interstate traffic of the State of Texas. This made possible a showing as to revenues, expenses, detailed traffic statistics and estimates of rate of return on the property involved which could not be made with reference to the earlier cases.

The carriers filed a mass of traffic, accounting and valuation figures which induced the Interstate Commerce Commission to remark at page 103 of their report that "These statements and exhibits, concerning which we know of no dispute, are indicative that there is something wrong with the Texas railroads." Testimony was introduced showing that the Texas carriers had asked the Texas Railroad Commission to allow them to make increases in rates on various commodities which were partially allowed with modifications.

The Interstate Commerce Commission remarks at page 100 of its report that other increases had been allowed by the Texas Commission which do not appear of record in this case.

Much space is devoted to comparisons between the rates on various commodities then in effect from Shreveport to Texas points with the rates originally applicable within the state of Texas for similar hauls, and the proposed increases in such Texas rates sought by the carrier and granted by or pending before the Railroad Commission of Texas.

Comparisons are also made as to classification ratings and rules applicable on Texas traffic with the ratings and rules of the current Western classification applicable to Shreveport traffic.

The order of the Interstate Commerce Commission fixed maximum class and commodity rates and classification provisions applicable to the traffic between Shreveport and Texas points, and required the carriers to apply such rates and classification provisions between Texas points to remove undue discrimination found to exist against Shreveport.

There is no specific finding that the rates prescribed by Texas are too low or that the earnings resulting from the intrastate traffic of Texas are inadequate or unreasonably low. The statements of the Interstate Commerce Commission preceding its conclusion that there is something wrong with the railroads of Texas indicate that it thought the earnings from the combined inter—and intrastate traffic were insufficient, but there is no statement of fact or exhibits of record in this case which so separates the two classes of traffic as to make possible the conclusion that the undesirable financial condition of the carriers was due to losses sustained wholly in intrastate or interstate operations. Yet, since the order fixing the rates to be observed as maxima by the carriers results in reductions in the interstate charges applicable to Shreveport traffic, and increases as to traffic moving wholly within Texas, we must conclude that the Interstate Commerce Commission was really convinced that the disability of the carriers flowed from inadequate state earnings. This and the further fact that the commodity rates fixed by the Interstate Commerce Commission agree quite closely with the proposed increases sought by the carriers for intrastate application in Texas gives rise to the impression that what the Interstate Commerce Commission really did in this case was:

To determine that the revenues of the carriers were inadequate, due to unduly low state made rates;

To fix reasonable rates, curing this revenue situation as to state rates; and

To apply the rates so determined as maxima to interstate traffic under similar circumstances.

Whether or not this was the *modus operandi* by which the Interstate Commerce Commission reached its decision and determined the maximum rates to be **simultaneously applied between** Shreveport or Texas points and points in Texas, the actual result is the same. In order to remove unjust discriminations against the City of Shreveport the Interstate Commerce Commission has made an order which reduces a few interstate rates, and as an incident to the removal of such unjust discrimination, results in substantial advances in rates covering a major portion of the intrastate traffic of the state of Texas, and by so doing has entirely deprived the state of its power to regulate rates on such traffic for the life of the order.

The vital question for us to consider is, Ought this power to condemn state made rates, either directly or indirectly, be exercised by the Interstate Commerce Commission?

The Supreme Court of the United States has recently passed on the question of proof required to establish the confiscatory character of state made rates in the Minnesota Rate Cases and other state cases decided at that time. If the proof in the Minnesota and other state rate cases was insufficient to warrant a finding that the rates fixed were confiscatory, and the state rates were upheld because of failure to prove that fact, can we agree that the state should be stripped of its rate making power on a record whose only condemnation of state made rates is that, as a result of their application in connection with interstate rates, the carrier's earnings are less than reasonable?

If the Interstate Commerce Commission is right in its determination that the circumstances and conditions surrounding Texas intrastate traffic are similar to those surrounding the traffic between Shreveport and Texas points, it must follow that the rates found reasonable as to Shreveport are reasonable as applied to Texas intrastate traffic, and the rates established by Texas authorities, lower than such Shreveport rates, are simply less than reasonable. Can it be possible that the state should be deprived of its authority to make rates by the judgment of the Interstate Commerce Commission, that rates are less than reasonable where the proof is of a less formal or complete character than would be required to establish a charge of confiscation in a court of law? This question has been answered in the Missouri River Nebraska cases at page 254, as follows:

"The Nebraska commission does not question the duty of this Commission to direct the removal of unjust discriminations caused by differences between interstate and intrastate rates. It recognizes our authority under the decision of the Supreme Court in *Houston & Texas Ry. v. United States*, 234 U. S. 342, to direct the removal of such discriminations although state rates are increased thereby. It insists, however, that this authority may not be exercised unless the Commission finds, and is justified by the evidence in finding, that the intrastate rates are confiscatory. This position involves the assumption that a state-made rate or system of rates can not be said to cause unjust discrimination unless it is unlawful for another reason, namely, that it is so low as to deprive the carriers of their property without due process of law or to deny them the equal protection of the laws. Such an assumption finds no support in those sections of the act which define unjust discrimination and undue prejudice, nor can it be justified in practice or on principle. This Commission is frequently called upon to determine whether a relation of rates is unjustly discriminatory where no question is or can be raised as to whether any of the rates involved are confiscatory. The act gives it no authority to determine whether state-made rates are confiscatory. The position is wholly indefensible that this Commission must inquire into an issue as to which it has no jurisdiction for the purpose of determining a question as to which its jurisdiction is not only complete, but exclusive.

"The evidence offered by the Nebraska commission has been carefully examined and full weight has been accorded the results of its investigations

as expressed in general order No. 19. The record convinces us of the earnest endeavor of that commission to deal with the complex problem of rate making with justice to all parties before it. It is our conclusion, however, upon the facts here disclosed, that the intrastate rates prescribed in that order are too low for application as reasonable maximum interstate rates between the Missouri River cities and points in Nebraska, and therefore too low to form the measure by which the unjust discrimination found to exist should be removed. This conclusion is fully sustained by the many rate comparisons and other related evidence, some of which has been reviewed in the foregoing paragraphs, and by the material reductions in the defendants' revenues which would be consequent upon the application of the intrastate rates to interstate transportation."

In this case the Interstate Commerce Commission found the class rates fixed by the Nebraska Commission to be too low for interstate application, based on comparisons with class rates established by the Interstate Commerce Commission in other cases, and, having in mind the reductions in the carriers' revenues which would follow. The action of the Interstate Commerce Commission was not based on any such statements of operating, financial and traffic results as were considered in the Shreveport case, and what has been said as to that case applies with even greater force to the situation here presented. Should the state made rate be condemned because it is lower than similar rates prescribed by the Interstate Commerce Commission in other cases, and would result in reductions of revenues where there is no determination that the resulting revenues would be too low, not to say confiscatory.

What has been said above is not intended as a criticism of the Interstate Commerce Commission in its efforts to discharge the difficult duties placed upon them by the Act to Regulate Commerce; the criticism, if it may seem to be such, is leveled at a situation which compels that body to act in the manner outlined.

We conclude that the legislation covered by the resolution passed at the 1914 session of this Association and referred to above is vital to the continued existence of state railroad commissions, and the exercise of the powers and duties with which they are charged by law.

W. H. STUTSMAN.

Mr. STUTSMAN, of North Dakota. Mr. Hillyer writes this letter, not as a dissenting opinion especially, but as an explanation of his position regarding it. I will read it in connection with this report:

"As a member of the Committee on Railroad Rates, I concur in the above and foregoing report, but with the recommendation that the resolution passed at the 1914 session referred to therein be now amended by adding at the end thereof the following words: 'and unjust; and that the same is violative of the Constitution of the United States or of some valid law or regulation enacted or adopted in accordance with the Constitution of the United States; and that to set the same aside does not violate any valid right of local self-

government reserved to the State and people of the locality involved'. So that the said resolution, when thus amended, shall be made to read as follows:

(The proposed amendment being inserted in brackets.)

"That nothing in this act, nor the exercise of any authority by the Interstate Commerce Commission by virtue thereof, shall absolve any railroad or other common carrier from obeying any rate, rule, regulation or practice of any State with respect to the transportation of passengers or property, or the receiving, delivery, storage, or handling of property wholly within one State and not shipped to or from a foreign country, from or to any State or Territory as aforesaid, unless and until such common carrier shall have secured the judgment of a court of competent jurisdiction holding such rate, rule, regulation or practice imposed as aforesaid, to be unreasonable unlawful (and unjust; and that the same is violative of the Constitution of the United States or of some valid law or regulation enacted or adopted in accordance with the Constitution of the United States; and that to set the same aside does not violate any valid right of local self-government reserved to the State and people of the locality involved).'

"The limitation contained in the resolution of 1914 as embodied in the words, 'unreasonable and unlawful' is, in my opinion, too indefinite and uncertain to be effective. The point in each particular case as developed from time to time will be addressed to the individual discretion of quite a large number of Judges, holding courts in various localities all over the country. They are liable to differ as to view of conflict between national laws and State laws, and still more to differ as to what is 'reasonable' or 'unreasonable.' The amendment here proposed seeks to diminish or eliminate this uncertainty.

"GEO. HILLYER."

The PRESIDENT. Mr. Stutsman, do you desire to make any motion in connection with this report?

Mr. STUTSMAN, of North Dakota. No, I do not, and I do not ask the Association to adopt the report. If the report should result in a discussion which would make clear the position of the Association upon this question, which is the paramount question in the matter of rates, that will be the attainment of the object in the preparation of the report. That is the reason I devoted practically the entire paper to that subject.

The PRESIDENT. I assume that you desire to move that the report be filed and printed?

Mr. STUTSMAN, of North Dakota. I move that the report be filed and printed.

The PRESIDENT. Does that motion also cover the letter from Commissioner Hillyer?

Mr. STUTSMAN, of North Dakota. Yes.

The motion was seconded.

Mr. THORNE, of Iowa. I suggest that the recommendation of Mr. Stutsman concerning the amendment to the act to regulate commerce covers precisely the same proposition which your Committee on State and Federal Legislation have been wrestling with for several days, and upon which we have finally agreed on a recommendation to the Association, simply reaffirming what we adopted two years ago on that proposition. Therefore it might be well to omit the discussion of this suggestion until we hear Mr. Finn's report.

The PRESIDENT. What is the pleasure of the Convention with reference to that suggestion?

Mr. CARR, of New York. I move that the report be adopted.

The PRESIDENT. Do you move that as an amendment?

Mr. CARR, of New York. First I suggest that we adopt the motion to file and print.

The PRESIDENT. Gentlemen, you have before you a motion that the report as presented, together with Mr. Hillyer's letter, be filed and printed. If there is no desire to discuss that, the question is on that motion.

The motion was unanimously agreed to.

The PRESIDENT. Now, Mr. Carr, do you desire to make any other motion?

Mr. CARR, of New York. Merely that we discuss this report in conjunction with the report of the other committee.

The PRESIDENT. There is no motion before the house, and the logical procedure would be to take up the special order, which is the report of the Committee on Federal and State Legislation. If there be no objection that course will be pursued, and the Chair will recognize Commissioner Finn of Kentucky, Chairman of the Committee on Federal and State Legislation.

## FEDERAL AND STATE LEGISLATION.

Mr. FINN, of Kentucky. Mr. President and gentlemen of the Association, you have been extremely patient with this Committee, and we will be as brief as possible in the presentation of the facts as they have been gathered by our inquiries of the various state railway commissions.

The foundation of our present dual system of state and federal government, with the powers and authority of each prescribed by a written constitution, was due to a question directly related to transportation, and grew out of the necessity of an agreement between Maryland and Virginia with regard to the navigation of the Potomac River, and the collection of duties at ports on its banks. To consider this question a convention was held at Annapolis on September 11, 1786, attended by representatives of five states, Virginia, Delaware, Pennsylvania, New Jersey and New York. This resulted in a second convention, held on the second Monday in May, 1787, and from this last convention resulted our constitution, practically in its present form.

George Washington was President of a transportation company before he was President of the nation. He was President of the Chesapeake & Ohio Canal. The commerce clause was placed in the Constitution more as the result of the efforts of Mr. Madison than of any other one man.

These questions, relating to the respective authority and jurisdiction of the state and federal governments, have from time to time been discussed in this Association since about 1910, when a simple resolution was introduced which in substance provided:

"That it is the sense of this Association that the power and authority of the Federal Government to regulate and control transportation shall not be in lieu of, but in addition to the power and authority of the states in such matters."

That resolution did not pass the Association until 1914, when Mr. Williams of Texas presented the resolution in a concrete form, and the Association went on record as favoring this as the fundamental principle and policy of our Government.

Right now is the most critical time in the history of our Government, because unquestionably a strong and powerful influence is gathering data, securing information and creating public sentiment through newspapers and magazines, through traffic organizations and commercial organizations which transportation companies can control, to induce Congress to centralize the regulation of common carriers in the Federal Government.

As an evidence of the efforts of the common carriers I read to you on an article from the Boston News Bureau, published on September 14, 1916, dated Washington:

"Every class of citizen doing business with the railroads of the country will be represented before the joint congressional committee charged with investigation of railroad legislation. Representatives of the railroads to-day began a systematic roundup of prospective witnesses. Agents of the roads, under direction of the legal advisers of the railroad executives' advisory committee started to comb the country for representative bankers, shippers, commercial organization officials and railroad men.

"The railroad committee expects to have a complete discussion of the railroad situation from every point of view ready to submit to the congressional committee through scores of witnesses just as soon as the inquiry is begun, immediately after election. J. P. Morgan will head the bankers who will submit their views to the committee, and he will be accompanied by half a dozen of Wall Street's biggest men who deal in the securities of the roads. The railroads likewise expect to produce bankers from various small towns throughout the country to give their views on railroad finance.

"The Chamber of Commerce of the United States, with its various component organizations and a score of associations of shippers, already have notified the congressional committee that they wish to be represented at the hearings. Members of the Committee hope to be able to complete their investigations in time to make a comprehensive report to Congress next January."

This same newspaper carries another article dated Boston, which says:

"Railroad shares are in better demand on the assurance from those high in the councils of the republican party that if successful in the forthcoming state and national elections, they will work to abolish all state railroad commissions. A centralized control is believed to be the wisest solution of the



many aggravating problems now arising from the conflicting requirements of the various states. In any event railroad stocks are being bought on this prospect."

In 1908 one of the great political parties of this country declared positively against centralizing the control of common carriers in the Federal Government. That was renewed in 1912. In 1916 the Democratic Party was silent upon the subject, while the Republican Party specifically declared in its platform for a policy centralizing the control of common carriers in the Federal Government. However, it may be well to present in this record a statement of the general views of Justice Hughes, which was made by him in an annual address to the New York State Bar Association, upon the 14th day of January, 1916. On page 9 of his printed address Justice Hughes said:

"An over-centralized government would break down of its own weight. It is almost impossible even now for Congress in well nigh continuous session to keep up with its duties, and we can readily imagine what the future may have in store in legislative concerns. If there were centered in Washington a single source of authority from which proceeded all the governmental forces of the country—created and subject to change at its will—upon whose permission all legislative and administrative action depended throughout the length and breadth of land, I think we should swiftly demand and set up a different system. If we did not have states, we should speedily have to create them."

With such a declaration in opposition to the centralization of power in the Federal Government, why should there be an exception when it relates to the question of transportation, which is the biggest question in the nation, when more evils can result from the centralization of the control and regulation of common carriers in the Federal Government than can result from the centralization of any other governmental policy? In transportation matters why make an exception to the application of this general principle which Justice Hughes accedes to, when that subject is most vital to the interests of the people of this country? Now President Wilson states positively his faith and belief in the dual system of government, and gives it as his opinion that the framers of the Constitution were more afraid of granting to the Federal Government too much power than too little power. He says:

"They were even more afraid of having too strong a central government than of having one which was too weak, and they accepted the new constitution offered them by the Convention of 1787 because convinced of the truth of the arguments urged by its friends to the effect that the Union would be federal merely, and would involve no real sacrifice of individuality or autonomy on the part of the states."

Now there has been a hearing before a committee of the Senate, and at that hearing Judge Prentiss, the retiring President

of this Association, and myself appeared, and Judge Thom represented the common carriers. Judge Thom has also written an article favoring the centralization of the control of common carriers in the Federal Government. Among other things Judge Thom makes this statement:

"The public conscience of this country has put the railroads out of politics."

That statement was made before this committee, and there is no parenthesis here to indicate that the committee smiled when that statement was made. He continues:

"But on the other hand, while the railroads are put out of politics, those who want to make them a political issue have not been put out of politics."

That puts the opposition to centralization upon a very low basis, and is a very severe criticism of those who object to centralization. In a statement by Mr. Thom in opposition to the dual form of government he states:

"The expenses put upon the railroads by the full-crew statutes of these two states by reason of unnecessary employes amount to more than \$1,700,000 a year. This sum would pay interest at five per cent upon a capital fund of \$34,000,000. By requiring an amount equivalent to the interest on this capital to be expended on useless employes—at least on employes as to which the other states were not consulted—instead of being used to obtain new capital, these two states have, by their own individual action, reduced the borrowing capacity of railroads to the extent of \$34,000,000. That amount of capital would have bought 1,360 locomotives, or 3,400 steel passenger coaches, 3,400 freight cars, 1,133,000 tons of steel rails, or block-signalized 13,600 miles of road."

Mr. YATES, of Illinois. What two states does he refer to?

Mr. FINN, of Kentucky. Pennsylvania and New Jersey. Now that statement is characteristic of many of the arguments that are made against state control. I desire to place in the record a statement signed by Honorable Martin G. Brumbaugh, Governor of Pennsylvania, in which he gave his reasons for vetoing the repealer act. He says:

"COMMONWEALTH OF PENNSYLVANIA,  
"EXECUTIVE CHAMBER,

Harrisburg, June 19, 1915.

"I file herewith, in the office of the Secretary of the Commonwealth, with my objection, House bill No. 842, entitled 'An act to empower the Public Service Commission to require railroad corporations to employ an adequate number of men upon trains, and to repeal an act, entitled An act to promote the safety of travelers and employes upon railroads by compelling common carriers by railroad to properly man their trains, approved the nineteenth day of June, one thousand nine hundred and eleven.'"

"This bill empowers the Public Service Commission to require railroad corporations to employ an adequate number of men upon trains. It repeals the act of June 19, 1911. It is known popularly as the 'Full Crew Repealer.' There has been much discussion of this bill. An extensive and systematic publicity campaign was inaugurated to secure its passage. The members of the Legislature, so they informed me, were subjected to the pleadings of a large and persistent lobby until the bill had passed. Thousands of letters and other literature came to them and to the Executive. Employees in the offices of one corporation stated to me frankly that they were very anxiously working for the repealer because as one—their spokesman—put it, if we help the company get this repealed, we will get an increase of salary. All the discussion of this question seemed to indicate to the public mind that there are now, under law, a great army of unnecessary employees carried on the trains. As a matter of fact there is only one additional employee required by the present law, above the number necessarily and willingly carried by the companies. This one extra man has caused all this discussion and legislation. To this statement the companies assent quite as freely as do the employees. This one man is, then, the significant factor. The companies assert that he is not needed. The employees assert that he is needed. In arguing the matter the companies refer to the through passenger and express trains that make few if any stops between division terminals; whereas the employees refer to the large number of increasingly long freight trains made up of 75 to 125 cars, each of heavy tonnage. There has been no common basis of facts for the arguments for and against. In the meantime it has been proclaimed that the loss of life has, since this present law became operative, been substantially reduced if not eliminated so far as passengers are concerned, and that this is due not so much to the manning of the passenger trains as to the fact that freight trains do not menace passenger traffic. In other words, the additional man on the freight crew has added to the safety of passenger traffic, just as trackmen, signalmen and other employees not on a passenger train add to the safety of passengers on those trains.

"It is claimed that this additional man on the crew is a menace to the proper performance of duty by the other members of the crew. If so, and it is a challenged assertion, the corporation knows well how to secure and enforce discipline among its employees, as do all other companies and corporations employing men for definite services. This additional man is the emergency man on the train. He is not always busy. The same fact is true of other members of the crew. But he is needed when the unusual occurs, and his presence may save life or property, or both. In fact, the records show this to be the case.

"Within one year the railroad companies secured an increased freight rate by action of the Interstate Commerce Commission. A potential argument of the companies for this increase was the fact that the full crew law added to the expense of operating their service. They had scarcely secured the increased rate until steps were taken to repeal the law requiring this full crew. This situation has definite bearing upon the action now taken.

"To deny these corporations their petition is a serious matter. They are public carriers acting under law. They have rights as such that the Commonwealth must and should conserve. They perform a vital service to all the people. They deserve fair consideration—the same that is guaranteed to the humblest citizens, and no more. It has not been shown me that they are denied any equal protection under present law, and if they can demonstrate in the next two years that a law now in operation is not fair to them and to employees, it will be the duty of all officials to do justly by them. Until then the matter should remain as it is.

"For these reasons this bill is not approved.

"MARTIN G. BRUMBAUGH."

Further answering the statement of Mr. Thom I desire to state that when the President was Governor of New Jersey in 1912 he urged the Legislature to pass a full-crew law, using in part this language:

"I recommend, moreover, the passage at an early date of an act requiring railroads operating within this State to provide their trains with adequate crews. Our sister State of Pennsylvania has adopted legislation of this kind and the railways whose lines cross from Pennsylvania into New Jersey actually carry full crews to the border of this State and then send their trains on through New Jersey with diminished crews to the jeopardy, as I believe, of life and property, requiring more of the small crew than it can safely and thoroughly do".

Arkansas, Arizona, California, Indiana, Maine, Maryland, Massachusetts, Nebraska, Nevada, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, Texas, Washington and Wisconsin have passed laws providing for a sufficiency of crews. To test the cost and efficiency of the full-crew law I have had a comparative table of employees and wages made covering three years on the Pennsylvania, New York Central & H. R. Railroad, New York, New Haven & Hartford, Lake Shore and Michigan Southern Railway, Erie, Lehigh Valley, Delaware & Hudson and the Delaware, Lackawanna & Western Railway Company operating in New York.

The result of this investigation, which is taken from the records of the Public Service Commission, Second District of New York, shows total amount paid 65,438 train service employes on the 8 roads mentioned for the year 1913, allowing 300 days for the year at an average wage of \$3.67 per pay, was \$72,037,238. In 1914 the same companies employed only 61,070 men, or 4,368 less than in 1913. The average daily wage for the year 1914 was \$3.79, allowing 300 days per year making the total pay-roll for the year 1914 \$69,436,590, a decrease of \$2,610,648 compared with 1913. It shows that the above named companies employed in train service for the year 1915 55,257 men and using the same \$3.79 per day as the average wage and allowing 300 days for the year we find that the 8 roads named above paid \$62,827,209 in wages to train service employes, or a decrease in 1915 of \$9,220,029 in comparison with the year 1913.

Thus it appears that these 8 roads instead of increasing their total expenditures on train service employes 2 million, or any other sum when the full-crew law became effective actually decreased their expenditures in 1914 by \$2,610,648 and by \$9,220,029 in 1915.

On page 40 of the Ninth Annual Report of the Public Service Commission of New York, Second District, will be found the accidents directly attributed to the operation of railroads for each of three years, 1913-1914 and 1915. The number of accidents in the

year 1913, 7,626; in 1914, 6,249; in 1915, 4,981. The number of passengers killed in 1913, 51; in 1914, 14; in 1915, 9. The number of passengers injured in 1913, 1,748; in 1914, 956; in 1915, 833. The number of employes killed in 1913, 250; in 1914, 197; in 1915, 142. The number of employes injured in 1913, 3,760; in 1914, 3,031; in 1915, 2,144.

Taking the year 1915 and comparing same with the year 1913 the number of passengers injured were reduced 915. If the average damage paid to each amounted to \$500 this sum would amount to \$457,500 saved by these roads. The employes killed were reduced by 108 in number, allowing \$4,000 in each case on the basis of the Workmen's Compensation Law this amounted to a saving of \$432,000. Injured employes were reduced by the number of 1616, allowing \$500 for each injured employe the sum saved would have amounted to \$808,000 making a total saved by the full-crew law of \$1,897,500 to say nothing of the amount of property saved as a result of this law. I say as a result of this law because the Public Service Commission of the Second District of New York in their Ninth Report states, in connection with this reduction of deaths and accidents, "that a small part of this reduction is not attributable to the decreased train mileage but rather to increased efficiency and watchfulness of employes."

Thus we have overwhelming evidence that the very State law concerning which the advocates of centralized control most complain was favored by the President; has not resulted in increased expenditures when the decrease in accidents, deaths and injuries to persons and property is considered.

Now the great hue and cry relates to credit. I call your attention to the fact that Mr. Woodrow Wilson, in speaking of the relationship existing between banks, railroads, industrial, commercial and public service bodies declared that it was such that those who borrow and those who lend are practically one and the same; those who sell and those who buy are but the same persons trading with one another under different names and in different combinations.

He was justified in that statement as the result of an investigation which was made by the Pujo Committee. They found that the vast systems of railroads in the various parts of the country are in effect subject to the control of this inner group, a situation not conducive to genuine competition. The "inner group" referred to here are J. P. Morgan & Company, The First National Bank of New York, the National City Bank, Kidder, Peabody & Company of Boston and New York, and Kuhn, Loeb & Company. They not only control transportation but they control the banks, they control the insurance companies, and they control sources of credit.

Now that is why these gentlemen who represent common carriers can declare to the public that they are insolvent, that they are on the verge of ruin. Any man in ordinary business, if he desires to borrow money, does not advertise the fact that he is insolvent; but

when common carriers secure their credits from the same source to which the carrier itself owes its existence, the transaction simply amounts to taking money out of one pocket and putting it into another; and if this operation can be made to appear to the public to be difficult, they use the transaction as a means of exacting a profit from the public by declaring that credit cannot be maintained unless freight rates are increased.

Your Committee addressed letters to all of the state railway commissioners, propounding certain questions which I will not read. I have compiled in this report the responses to those questions. As the main subject relates to the regulation and control of common carriers by the states or the Federal Government, I will only read those responses which apply to this particular feature. I will state, however, that about thirty-one different states responded to these inquiries. They showed that the field of activity by the various states railway commissions was extremely broad, that they did a great service and are doing a great service for their people. This record will disclose a number of cases handled by the various state railroad commissions, both informally and formally.

I have asked this question of the various railroad commissioners:

"What orders in your state have resulted in embarrassment to the carrier in its operation?"

To read the newspapers, one would conclude that in the operation of transportation companies through this country, when they come to state lines, they would actually have to stop the trains, that they could not cross each other's lines, on account of the absurd and conflicting laws of the several states. As a result of this investigation we find that no such condition prevails.

"What orders of your Commission have produced conflicts of authority with the Federal Government or with sister states? Explain fully the cause of such a condition if any exists."

"In your judgment is it a wise governmental policy to centralize the power of regulation and control of common carriers exclusively in the Federal Government."

"Make any other statement concerning the latest subjects and questions not embraced in the above inquiries which you deem appropriate."

Our report is as follows:

To the President and Members of the National Association of Railway Commissioners:—

Your Committee on State and Federal Legislation makes the following report. The Honorable Clifford Thorne was tendered chairmanship of this Committee but for reasons thoroughly satisfactory the President accepted his resignation and tendered the

Chairmanship to me; and I agreed to give whatever time I could to the preparation of this report.

The Executive Committee of the National Association of Railway Commissioners requested me to meet with them in Washington on June 16, 1916. Complying with their request I attended said meeting and the following resolution was adopted by said Committee.

WHEREAS a certain resolution known as the Newlands' Resolution has passed the Senate and is now pending in the House of Representatives as S. J. RES. 60, which resolution provides that a joint sub-committee of the Interstate Commerce Committee of the Senate and House of Representatives, consisting of five senators and five representatives, shall investigate the subject of government control and regulation of interstate and foreign transportation, the efficiency of the existing system in protecting the rights of shippers and carriers and in promoting the public interest, the incorporation or control of the incorporation of carriers, and all proposed changes in the organization of the Interstate Commerce Commission and the Act to regulate commerce, also the subject of government ownership of all public utilities, such as telegraph, wireless, telephone, express companies, and railroads engaged in interstate and foreign commerce and report as to the wisdom or feasibility of government ownership of such utilities and as to the comparative worth and efficiency of government regulation and control as compared with government ownership and operation; and

WHEREAS it has been alleged by the carriers that interstate and intrastate transportation have become so interwoven that the attempt to apply two, and often several sets of laws, to its regulation has produced conflicts of authority, embarrassment in operation and inconvenience and expense to the public, which alleged conditions should be relieved by placing the regulation and control of common carriers under exclusive Federal control; now, therefore,

Be it resolved that Laurence B. Finn, Kentucky, Chairman of the Committee on State and Federal Legislation, be, and he is hereby directed to furnish each State Railway Commission with a copy of these resolutions and to secure from each State Commission a full and complete statement relative to transportation conditions in the several States of the Union.

(a) Which of the following subjects are under the control and regulation of your Commission—freight, passenger, express and baggage rates, train service, station facilities, spur tracks, grade crossings, headlights, safety devices, equipment, stock yards, accounting, claims, accident reports, stock and bond issues?

(b) What subjects other than those mentioned above come under your jurisdiction?

(c) State the number of cases under each of the above subjects which have been decided formally or informally in the last

12 months, or which have been decided by your Commission at some prior date obviating the necessity of further hearing and complaint such as orders relating to headlights, or safety devices, or the issual of stocks and bonds?

(d) What benefits to the carrier and the shipping public have resulted from the formal or informal orders of your State Commission?

(e) State what, if any, difference there is between State and interstate rates beginning and ending in your State for similar distances, that is to say, state whether or not local intrastate rates are higher or lower in your State than that portion of the intrastate rate which forms a part of the through interstate rate?

(f) What orders of your Commission have produced conflicts of authority with the Federal government, or with sister States? Explain fully the cause of such a condition if any exists.

(g) What orders in your State have resulted in embarrassment to the carrier in its operation?

(h) What orders in your State have resulted in inconvenience and expense to the public?

(i) What orders in your State have resulted beneficially to the carriers in their operation?

(j) In your judgment is it a wise governmental policy to centralize the power of regulation and control of common carriers exclusively in the Federal Government?

(k) Make any other statement concerning related subjects and questions not embraced in the above inquiries which you deem appropriate?

Senate Resolution No. 60 referred to is as follows:

(PUBLIC RESOLUTION—No. 25—64TH CONGRESS.)

(S. J. Res. 60.)

Joint Resolution Creating a joint subcommittee from the membership of the Senate Committee on Interstate Commerce and the House Committee on Interstate and Foreign Commerce to investigate the conditions relating to interstate and foreign commerce, and the necessity of further legislation relating thereto, and defining the powers and duties of such subcommittee.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Interstate Commerce Committee of the Senate and the Committee of the House of Representatives on Interstate and Foreign Commerce, through a joint subcommittee to consist of five Senators and five Representatives, who shall be selected by said committees, respectively, be, and they hereby are, appointed to investigate the subject of the Government control and regulation of interstate and foreign transportation, the efficiency of the existing system in protecting the rights of shippers and carriers and in promoting the public interest, the incorporation or control of the incorporation of carriers, and all proposed changes in the organization of the Interstate Commerce Commission and the Act to regulate commerce, also the subject of Government ownership of all public utilities, such as telegraph, wireless, cable,*



telephone, express companies, and railroads engaged in interstate and foreign commerce and report as to the wisdom or feasibility of Government ownership of such utilities and as to the comparative worth and efficiency of Government regulation and control as compared with Government ownership and operation, with authority to sit during the recess of Congress and with power to summon witnesses, to administer oaths, and to require the various departments, commissions, and other Government agencies of the United States to furnish such information and render such assistance as may, in the judgment of the joint subcommittee, be deemed desirable, to appoint necessary experts, clerks, and stenographers, and to do whatever is necessary for a full and comprehensive examination and study of the subject and report to Congress on or before the second Monday in January, nineteen hundred and seventeen; that the sum of \$24,000, or so much thereof as is necessary to carry out the purposes of this resolution and to pay the necessary expenses of the subcommittee and its members, is hereby appropriated out of any money in the Treasury not otherwise appropriated. Said appropriation shall be immediately available and shall be paid out on the audit and order of the chairman or acting chairman of said subcommittee, which audit and order shall be conclusive and binding upon all departments as to the correctness of the accounts of such subcommittee.

Approved, July 20, 1916.

On August the 8th, I addressed letters to each Railway Commission urging upon them the importance of early replies to the inquiries contained in the letter. If responses had been made at once, this report could have been filed in ample time to have been distributed among the other members of the Committee, as well as the entire membership of this organization; but as some reports have reached me as late as November 5th, it was impossible for the report to be prepared in time to be printed and distributed as the By-laws of the Association require.

To these letters forwarded at the behest of the Executive Committee responses have been received from Commissioners representing the following States:

Alabama	Nebraska
Arkansas	New Hampshire
California	New Jersey
Connecticut	New York
Georgia	Ohio
Idaho	Oklahoma
Iowa	Oregon
Kansas	Pennsylvania
Louisiana	South Carolina
Maine	Vermont
Michigan	Virginia
Minnesota	Washington
Montana	Wisconsin
Missouri	Wyoming

The personnel of my associates on this Committee are the Hon. Clifford Thorne, Iowa; H. F. Bartine, Nevada; P. W.

Daugherty, South Dakota; Henry T. Clarke, Jr., Nebraska; Elliott Northcutt, West Virginia, and the Hon. James S. Harlan of the Interstate Commerce Commission.

For reasons heretofore stated it has been impossible to present to the members of this Committee the data which I have received so that the Committee could analyze its significance with a view of making definite recommendations to this Association. Therefore, I deem it advisable to confine this report to a compilation of the data received from the various State Railway Commissions leaving to the Association the duty of crystallizing the majority opinion by the passage of some resolution reflecting the sentiment of this body upon the various questions upon which the Association may desire to place itself on record.

That the following analysis may be confirmed, I file with this report the various responses. As several of the States have not responded to these questions forwarded by the direction of the Executive Committee, I trust that the Commissions who have failed to respond will yet do so sometime during this Convention, at least to some if not all of the inquiries, so that the entire record may be complete.

Questions a and b propounded to the State Commissions—

(a) Which of the following subjects are under the control and regulation of your Commission—freight, passenger, express and baggage rates, train service, station facilities, spur tracks, grade crossings, headlights, safety devices, equipment, stock yards, accounting, claims, accident reports, stock and bond issues?

(b) What subjects other than those mentioned above come under your jurisdiction?

#### ALABAMA.

No definite response. Supervision in a general way over all public utilities both as to rates and services.

#### ARKANSAS.

Jurisdiction over passenger, express and baggage rates. Limited control over train service, station facilities, public spur tracks, grade crossings, equipment, track and operating conditions. No jurisdiction over headlights, safety devices, stock yards, accounting, claims, accident reports or stock and bond issues.

#### CALIFORNIA.

All subjects referred to in question (a) are under the jurisdiction of the California Commission and in addition thereto the Commission has jurisdiction over consolidations and sales, mortgages and encumbrances upon property, and over the granting of certificates of public convenience and necessity affecting electric railroads.

## CONNECTICUT.

Jurisdiction over freight, passenger, express rates, train service, station facilities, spur tracks, grade crossings, headlights, safety devices, equipment, stock yards, accounting and accident reports. No jurisdiction over claims or the issue of stocks and bonds under the general law; but by the provisions of the special charter of the New York, New Haven and Hartford Railroad the Commission has jurisdiction over the issue of stocks and bonds of that company. The Commission has general regulatory and supervisory authority over the plants and equipment of all public service corporations.

## GEORGIA.

The Georgia Commission has general supervisory and regulatory powers over the services, practices and rates of common carriers, including freight, passenger, express and baggage rates, train service, station and industrial track facilities, accounting, claims, accidents, headlights, safety appliances, equipment and stock, bond and note issues. The general duty of the Commission to see that all statutory and charter requirements of carriers are complied with.

## IDAHO.

The Commission has jurisdiction over all subjects embraced in question (a) except stock and bond issues. Jurisdiction over grade crossings confined to safety of same without authority to require installations. Jurisdiction of claims limited to overcharges.

## IOWA.

The Iowa Commission has jurisdiction over freight, express and tunnels, requiring railroads which cross each other's tracks grade crossings, headlights, safety devices, equipment, stock yards, accounting, claims and accident reports. Jurisdiction over safety devices and kindred subjects affecting equipment limited to interstate service. The Commission has no jurisdiction over passenger rates or stock and bond issues. Commission has jurisdiction over transmission lines and telephone lines crossing railway tracks.

## KANSAS.

The Kansas Commission states that it has jurisdiction over the list of subjects embraced in question (a).

## KENTUCKY.

The Kentucky Commission has authority to regulate and control passenger and freight rates on complaint over the lines of a

single carrier; but has no jurisdiction over joint rates. It has jurisdiction over express companies, telephone companies, telegraph companies and steamboat companies to a limited degree. It has no jurisdiction over train service, headlights, safety devices, equipment, stock yards, accounting, claims or stock and bond issues. Its jurisdiction to require accident reports is limited to cases where death ensues. Several statutes have been passed which prescribe certain specific duties in the matter of train equipment such as airbrakes, safety appliances provided at bridges and tunnels, requiring railroads which cross each others tracks to come to full stops; but no specific jurisdiction over train service or train or track facilities has been given to the Commission. Carriers are required in general terms to furnish sufficient accommodation for the transportation of passengers and property within a reasonable time after the same has been offered for transportation. By a general provision of the statutes it is made the duty of the Commission to see that the laws relating to railroads (except. street) are faithfully executed. Interurban electric railways are also under the jurisdiction of the Commission to the same extent as steam carriers by rail. The Commission also has jurisdiction under certain conditions to require the erection of new station buildings; but this authority is denied by the carriers. The Commission has jurisdiction to grant reparation for overcharges. For three successive terms of the Legislature proposed acts have been submitted giving to the Commission additional jurisdiction over common carriers, but the carriers have been successful in defeating such legislation each time.

#### LOUISIANA.

The Louisiana Commission has jurisdiction over rates and services of railroads, telegraph, telephone, steamboat, express companies and sleeping-car companies. The response does not particularize jurisdictional subjects.

#### MAINE.

Law passed in 1913 giving the Commission control and regulation over freight, passenger, express, baggage rates, train service, station facilities, spur tracks, grade crossings, accounting, claims, accident reports, stock and bond issues. The Commission's judgment is that while headlight, safety devices, and equipment are not specifically mentioned, that the provisions of the act requiring proper service and condemning improper practices would embrace these subjects. The state has no stock yards.

#### MICHIGAN.

The Commission has jurisdiction over all subjects mentioned in question (a), also in case of wires crossing over railroads or

railways, also grade separations in case municipal or quasi-municipal authorities cannot agree, also location of highways across railroads and in certain cases separation of grades. Also concerning railroad consolidation.

## MINNESOTA.

Minnesota Commission has jurisdiction over steam railroads, express companies, electric suburban lines and its authority fully covers the subjects of freight, passenger, express and baggage rates, train service, station facilities, furnishing protection at grade crossings, engine headlights, safety devices, accounting and accident reports. The Commission has no jurisdiction over the settlement of claims, overcharges and stock and bond issues but the first two named are handled informally and very extensively. Additional subjects under the jurisdiction of the Minnesota Commission are telephone companies, weights and measures, merchandise and storage warehouses in cities of the first class (except grain and cold storage warehouses) grain inspection and weighing, terminal grain elevators, country elevators, commission merchants, weighing of coal at the head of the Lakes and supervision over track scales.

## MISSOURI.

The Missouri Commission has jurisdiction over the subject matters named in (a) except headlights and stock yards. It also has jurisdiction over the following utilities:—Street Railways, express companies, gas and electric companies, telegraph and telephone companies and water companies.

## MONTANA.

The Commission has jurisdiction over freight, passenger, express and baggage rates, train service and station facilities under a statute which in general terms requires carriers to operate sufficient trains and to provide for proper and reasonable accommodation for the public. No jurisdiction over grade crossings except statutory requirements that all crossings shall be planked flush with the rails. Headlights required by the general statutes provide that the lights shall not be less than 1500 candle power except on switch engines. Penalty is provided for violation of the law. The Commission has jurisdiction over safety appliances and devices but no jurisdiction over equipment except as the statute relates to train service. No authority over stock yards except under the same section and then only if the stock yards are used as a part of the train service. The Commission has no authority over accounting except that all reports may be required to be verified by the Commission and the manner of said reports pre-

scribed. Accident reports are required where the accident requires the services of a physician or where property damaged is in excess of \$2000.00. The Commission has no authority over the issue of stocks and bonds. The authority of the Commission over spur tracks is limited to grain elevators. Such spur tracks over which the Commission has jurisdiction cannot exceed one mile in length and must be within switch limits and must be constructed according to the usual contracts of the particular road affected.

#### NEBRASKA.

The Nebraska Commission has jurisdiction over freight, passenger, baggage, express rates, train service, station facilities, grade crossings, and the enforcement of statutes relating to headlights, safety devices, equipment, stock yards, accounting, accident reports, stock and bond issues. The power of the Commission is constitutional, embraces rates, services and the general control of common carriers. Other common carriers and steam roads under the jurisdiction of the Commission to the same extent.

#### NEW HAMPSHIRE.

The New Hampshire Commission has jurisdiction over all subjects embraced in question (a). The jurisdiction of the Commission over claims extends to refunds and the assessment of damages for land taken for railroad purposes. The term 'service' is defined by law and is to be taken in its broadest most inclusive sense. Specific provisions relate to leases, transfers, constructions and extensions.

#### NEW JERSEY.

The Commission has power to require railroad companies to furnish safe, adequate and proper service and to maintain their property and equipment in a condition to enable them to do so. Under such a provision the Commission's engineers and inspectors examine the tracks, bridges and equipment of carriers and complaints concerning same are investigated. The board has authority over grade crossings and may abolish dangerous crossings. The railroad challenges the jurisdiction of the Commission relative to grade crossings because the statute places the cost on the carriers. The Commission has jurisdiction over express companies, street railway companies, electric light and power companies, gas companies, water companies, sewer companies and telephone and telegraph companies.

#### NEW YORK.

State of New York, Public Service Commission, Second District. All of the subjects mentioned in question (a) are under

the control and regulation of the Commission and it has jurisdiction over the manufacture, sale and distribution of gas and electricity and steam for heating and power purposes, telephone and telegraph lines.

#### OHIO.

The Commission has jurisdiction over the subjects mentioned in question (a) except privately owned stock yards and over other utilities operating in Ohio. In addition to the subjects mentioned in question (a) the Commission has power to compel observance of State hours-of-service law and the full-crew law. Under the head of safety devices the Commission investigates couplers, brakes, grab irons, boilers, ash pans of locomotives, candle power of headlights, fire extinguishers, wire construction over and along side tracks, interlocking plants, signals, blocking of frogs and other openings in rails. The Commission has authority to suspend advanced rates.

#### OKLAHOMA.

The Oklahoma Commission has jurisdiction over freight, passenger, express and baggage rates, train service, station facilities, spur tracks (under certain limitations), grade crossings (under certain limitations), Safety devices (so far as concerns crossings and interlocking systems), equipment, stock yards, accounting, accident reports. No jurisdiction over headlights or safety devices generally. No jurisdiction over stock and bond issues. In addition the Commission has jurisdiction over transmission companies, including telephone and telegraph lines, jurisdiction over oil pipe line companies, gas pipe line companies, gas distributing companies, electric light companies and water companies and cotton gins. The Commission also has jurisdiction over the laws pertaining to the conservation of crude oil, petroleum and natural gas. The Commission has jurisdiction over monopolies.

#### OREGON.

The Commission has jurisdiction over freight, passenger, express and baggage rates, train service, station facilities, spur tracks, grade crossings, stock yards, accounting and accident reports. A statute requires electric headlights. Track scales are also under the jurisdiction of the Commission. The Commission has jurisdiction over claims for loss of damage to the extent of investigating and reporting the settled and unsettled claims.

#### PENNSYLVANIA.

All subjects mentioned are under the control and regulation of this Commission. Additional subjects under the jurisdiction of the Commission not reported.

## SOUTH CAROLINA.

All subjects mentioned in question (a) are under the jurisdiction of the Commission of South Carolina except stock yards, industrial tracks, claims, stock and bond issues and in addition the Commission has jurisdiction over telegraph, telephone companies, interurban electric railways and railway crossings.

## VERMONT.

The Commission of Vermont has jurisdiction in all matters provided in the charter of railroad corporations or in statutes of the State relating to railroads and especially concerning the following subjects:—The crossing of one railroad by another, signs, signals, gates and flagmen at highway grade crossings, station facilities, fencing, cattle guards and farm crossings, tracks, frogs, switches, gates signals, culverts, bridges and other structures of wood or iron over openings, rolling stock and equipment, connections between connecting roads, the issue of stocks and bonds, tolls and rates, railroad operations. In addition the Commission has jurisdiction over gas and electric companies, express companies, telephone and telegraph lines, including the power of prescribing rates, service, equipment and stock and bond issues.

## VIRGINIA.

The Virginia Commission has jurisdiction over all subjects mentioned in question (a) except accounting and stock and bond issues. The power of the Commission to require reports indirectly includes accounting. Publicity is required before stocks and bonds are issued and the carriers required to file with the Commission a statement showing the consideration received for the sale of its stocks and bonds. The Commission issues charters to foreign corporations to transact business within the States, assesses the property of all public service corporations for taxes and has general jurisdiction over the rates and practices of telegraph and telephone, heating, light and power companies and water and gas companies.

## WASHINGTON.

The Washington Commission has jurisdiction over all subjects mentioned in question (a) except stock and bond issues; and in addition has jurisdiction over track scales and track connections.

## WISCONSIN.

The Wisconsin Commission has jurisdiction over all subjects mentioned in question (a) except headlights and claims. The



Legislature prescribes standard headlights on all locomotives. Switching locomotives and claims due to overcharges are under the jurisdiction of the Commission. Other subjects under the jurisdiction of the Commission include right-of-way fences, railroad crossings, industrial tracks, new lines and extensions, joint use of tracks, switching conditions, separation of grade crossings, telegraph rates and services and sites for public elevators and warehouses.

## WYOMING.

The Wyoming Commission has jurisdiction over freight, passenger, express and baggage rates and grade crossings and the services and facilities of all public utilities.

(c) State the number of cases under each of the following subjects which have been decided formally or informally in the last 12 months, or which have been decided by your Commission at some prior date obviating the necessity of further hearing and complaint such as orders relating to headlights, or safety devices or the issual of stocks and bonds.

## ALABAMA.

No definite response to this inquiry.

## ARKANSAS.

Subjects—station facilities, side tracks and train service	78
Rate cases .....	95

## CALIFORNIA.

Formal complaints relating to rates.....	27
Service and facilities .....	14
Extensions .....	3
Reparation .....	7
Jurisdiction .....	1
Rules and regulation.....	1

### Electric Railroads:

Service and facilities .....	5
Extensions .....	3

### Express Companies:

Rates .....	1
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Car Companies:

Service and facilities .....	1
Applications for construction, alteration, or abolishing railroad crossings .....	144
To issue stocks, bonds or notes.....	22
To sell, purchase, lease or mortgage property.....	6
To increase rates .....	5
To establish rules and regulations.....	5
To discontinue service.....	11
For relief from a statute prohibiting train dispatching by telephone .....	23
To approve joint track agreements .....	4
To reconstruct railroad destroyed by flood.....	1
On electric railroads applications for construction, al- teration or abolition of railroad crossings.....	48
To issue stocks, bonds or notes.....	14
To sell, purchase, lease or mortgage property.....	3
To extend time to reconstruct electric distributing lines	2
Certificates of public convenience and necessity.....	6
To discontinue service .....	5
For relief from statute prohibiting telephone dis- patching .....	6

Express Companies:

Applications for increasing rates .....	2
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During the year ending June 30th, 1916, the following informal complaints were filed with the California Commission:

Steam railroads, rates.....	273
Refunds .....	218
Service, including extensions .....	130
Railroad crossings .....	26
Rules and regulations.....	2
Safety of structures.....	3
Loss and damage.....	31
Violations of law.....	4
Electric railroads, rates .....	20
Refunds .....	8
Service including extensions .....	40
Railroad crossings .....	5
Safety of structures .....	6
Violations of law.....	1
Express companies, rates .....	24
Refunds .....	3
Service including extensions .....	11
Loss and damage .....	4

## CONNECTICUT.

No definite response. Numerous orders and recommendations made pertaining to safety of operation resulting from accident investigations.

## GEORGIA

Passenger fares and service .....	57
Freight rates and charges .....	180
Freight service .....	32
Claims .....	87
Side and spur tracks .....	15
Station facilities .....	48
Express rates and service .....	25
Stock and bond issues .....	8
Miscellaneous subjects .....	14
<b>TOTAL .....</b>	<b>466.</b>

Over 1500 cases relating to services, practices and rates of railroads and express companies handled informally.

## IDAHO.

Passenger rates .....	11
Freight service .....	12
Station facilities .....	10
Spur tracks .....	1
Grade crossings .....	4
Equipment .....	2
Stock yards .....	2
Claims .....	6
<b>TOTAL .....</b>	<b>71</b>

## IOWA.

Express rates fixed on a distance basis covering entire State, likewise the freight rate schedule is based upon a distance tariff. Numerous commodity rates and classification matters prescribed by the Commission. The Commission has settled formal and informal complaints relating to freight rates to the number of 115, a large percent of same being settled without a formal hearing. 48 train service cases, 48 station facility cases, 7 spur track cases, 61 grade crossing cases, 7 equipment cases, 4 stock yard cases settled without formal complaint. The Commission has assisted in the adjustment of 75 damage claims. Total number of all kinds of cases settled or decided 518.

# KANSAS.

Freight cases .....	157
Passenger .....	11
Express .....	2
Baggage rate .....	12
Train service and station facilities .....	24
Spur tracks .....	4
Grade crossings .....	8
Accident reports .....	3
Stock and bond issues .....	23
Side tracks .....	1
Freight classification .....	10
Car service .....	5
Transfer of cars from one road to another .....	17
Fixing charges between railroads .....	1
Interlocking signals .....	11
Certificates of convenience and necessity .....	11
Assignment of franchise .....	1
Permission of roads to cross each other .....	4

# KENTUCKY.

Formal complaints relative to freight rates estimated, .....	12
Refunds for overcharges, estimated, .....	50
Applications by carriers to be relieved from the operation of the Long & Short Haul Clause, estimated, .....	4
Applications for additional depot facilities, estimated .....	6

Numerous miscellaneous subjects informally handled.

# LOUISIANA.

No definite response.

# MAINE.

Commission recently established actively investigating jurisdictional subjects.

Spur track decisions .....	7
Stock and bond issues since August 1, 1915 .....	7
Bond issues authorized .....	\$17,553,000
Stock .....	3,000,000
Refunds on reparation claims since August 1, 1915 .....	25
Accidents at grade crossings localities .....	16
Railroad accidents except at grade crossings .....	99
Accidents of utilities other than railroads .....	7

## MICHIGAN.

The Railroad Commission has issued formal orders in the following subjects:—

Station facilities .....	1
Abandoning railroads .....	2
Highway crossings .....	14
Protection of grade crossings .....	52
Railroads crossing each other .....	36
Adjustment of rates .....	20
Adjustment of claims, formal and informal .....	61
Wire crossing permits .....	201
Accident reports .....	2564
Miscellaneous .....	17
Issues of railroad stocks amounting to \$217,700 .....	2
Issue of railroad bonds amounting to \$113,912,648 .....	16
Issue of trust equipment and miscellaneous notes for railroads .....	\$8,899,500

## Certificates to qualify trainmen:

Conductors .....	18
Locomotive engineers .....	21
Brakemen .....	1
Flagmen .....	45
Telegraph operators .....	1

Hundreds of other informal matters have been adjusted by the Commission.

## MINNESOTA.

For year ending June 30, 1915 the Commission has held 1850 formal and informal complaints, the most important of which are inspecting interlocking plants, block signals, depot and depot facilities, side tracks, train service, state and interstate claims, overcharges and rate cases.

## MISSOURI.

The Commission has determined 255 formal cases and 375 informal cases not subdivided.

## MONTANA.

No definite response.

## NEBRASKA.

Has handled cases relating to freight rates and rules 11 formal, 52 informal, 109 applications. Express rates and rules 18 formal, 3 applications. Passenger rates 2 formal, 5 informal, 12 applications. Baggage 11 applications. Train service 3 formal, 44 informal, 3 applications. Station facilities 4 formal, 36 informal. Equipment 1 formal, 6 informal. Stock yards 1 formal, 20 informal, 1 application. Claims settled by arbitration 90, 6 applications for stock and bond issues. Safety devices 2 formal, 4 informal. Accounts 1 formal, 4 informal. 44 other miscellaneous subjects including crossings, spur tracks, fences, demurrage, storage, drainage, industrial sites and telegraph companies.

## NEW HAMPSHIRE.

Freight rates 2 formal, 4 informal. Passenger rates 1 formal, 2 informal. In 1914 an investigation of state rates made by the Commission eliminating numerous discriminatory schedules which has operated to reduce complaints regarding rates. The Commission has issued other orders relative to express rates, train service, station facilities, spur tracks, grade crossings, equipment and has formally investigated 12 accidents and made an informal investigation of 35.

## NEW JERSEY.

Actively engaged in investigating intrastate rates but no specific response to this inquiry.

## NEW YORK.

No specific response to the inquiry. Commission does not keep its records so as to segregate the number of complaints handled under the different topics.

## OHIO.

The Commission handles over 1200 formal and informal complaints which relate to all the subjects over which the Commission has jurisdiction which includes track structure, service, facilities and rates.

## OKLAHOMA.

The Commission has not compiled data segregating the different complaints. The Commission has handled over 2000 formal complaints and several hundred informal complaints. The Commission has handled by telegram and telephone something over

200 informal complaints concerning car shortage during the last 3 months.

OREGON.

No definite response.

PENNSYLVANIA.

No definite response.

SOUTH CAROLINA.

No definite response.

VERMONT.

Answers that it has handled 172 formal and informal complaints relating to the various subjects under the jurisdiction of the Commission.

VIRGINIA.

The Commission replies that few formal cases have been decided within the last 12 months, that most of the complaints have been settled by correspondence and informal investigations.

WASHINGTON.

Has handled 230 rate cases, 890 grade crossing cases, 10 station facilities cases, 49 claims, 20 other cases relating to train service, spur tracks, stock yards and accidents.

WISCONSIN.

Has handled 177 formal cases relating to steam roads embracing the subjects of train service, station facilities, freight rates, refunds on overcharges, switching rates, crossings, stock and bond certificates and other miscellaneous subjects. The informal cases handled by the Commission number 219 which embrace the rates, service and practice of carriers.

WYOMING.

Has handled 6 cases informally relative to grade crossings, station facilities and train facilities.

(d) What benefits to the carrier and the shipping public have resulted from the formal or informal orders of your State Commission?

(g) What orders in your State have resulted in embarrassment to the carrier in its operation?

(h) What orders in your State have resulted in inconvenience and expense to the public?

(i) What orders in your State have resulted beneficially to the carriers in their operation?

#### ALABAMA.

We know of no orders that we have issued that have been embarrassing to the carrier. We feel that all orders made have been beneficial either to the public or the carriers, or both.

#### ARKANSAS.

The public has been benefitted in the way of train service, depot and rate regulation. The carriers have been benefitted by keeping them from doing certain things they would have done but for the Commission. No orders have resulted in embarrassment to the carriers and none have been of expense and inconvenience to the travelling public. A new tariff has been issued by the Commission eliminating irregularities, increasing rates on the whole from 12 to 15%. Many general orders are beneficial to the carriers.

#### CALIFORNIA.

California responds to the above inquiry as follows: The Commission has reduced rates in California since January 1st, saving the rate payers annually 4 millions of dollars, the service of carriers has been improved as well as the safety of their operation, the travelling public and employes and the general public thereby being benefitted. The Commission is conducting an educational campaign to secure safety at grade crossings resulting in benefit to the railroads and the public. No orders have resulted in embarrassment to the carrier except perhaps that common carriers have been embarrassed in their efforts to issue diluted securities, or to escape their full obligations to the public. Some orders of the Commission have resulted in expense but no inconvenience to the public. That is to say, in a number of instances we have authorized carriers to increase their rates which additional expense was borne by the public. We have closed useless grade crossings, incurring some inconvenience to a few but the general result has been beneficial to the public. The orders of the Commission have benefited the public in rate adjustments, improvement of service conditions, construction of depots, increased safety in operation and at grade crossings and in creating more healthy financial structures. We have rendered all possible assistance to carriers in times of car shortage



authorizing them to reduce or discontinue service where not profitable and we have increased rates where necessary.

#### CONNECTICUT.

Common carriers and shippers have been benefited by the orders of the Connecticut Commission along the line of safety in operation and expediting shipment. No orders have embarrassed the carrier except perhaps orders pertaining to the rate of speed issued in the interest of safety. No orders have resulted in inconvenience or expense to the public. Many orders and recommendations of the Commission pertaining to the location of switches, side tracks, station facilities and installations of signals have benefited railroad companies in their operation.

#### GEORGIA.

The Commission has benefited carriers and the public by establishing harmonious and co-operative relations between them. It is easily accessible and an economic forum where complaints can be handled properly without technicalities or burdensome expense. Rates have become stable, secret rebates prevented, unlawful discriminations removed, uniformity in rules, regulations and practices have been brought about. No orders have resulted in embarrassment or inconvenience or expense to the public.

#### IDAHO.

Carriers have been permitted to increase passenger rates on branch lines; interurban lines in some instances have been allowed increases in passenger rates. Carriers have been permitted to reduce the number of stops on passenger trains. The patrons have been benefited by a reduction on certain branch lines in passenger rates and by its refusal to allow interurban lines a blanket increase in all rates, by a reduction in through freight rates, by increasing stock yard facilities, by improved train service and by both freight and passenger charges being refunded to shippers. No embarrassment to the carriers in their operation has resulted from the orders of the Idaho Commission and none have resulted in inconvenience to the public.

#### IOWA.

The State Commission of Iowa has issued no order embarrassing the carrier in its operations. The carriers in Iowa have been very prosperous. Last year ending June 30, 1915 their net earnings amounted to 23 million on their intrastate traffic, a sum suffi-

cient to pay all operating expenses, taxes, maintenance, interest on bonds and debt as well as a sum equal to 7.23 percent on all the common stock outstanding in the hands of the public. In the year ending June 30, 1914, 7.70% and in the year ending June 30, 1913, 9.64%. Under the operation of the Commission the following benefits have resulted; uniformity in accounts, uniformity in rates, and a slight improvement in service. Discrimination in rates practically removed. Some discrimination in service and facilities yet remains.

#### KANSAS.

The shipping public has been benefited by having the complaints quickly investigated and adjusted. No orders have resulted in embarrassment to the carriers in their operation, nor have such orders resulted in inconvenience or expense to the shippers or the general public. Many orders of the Commission in reference to track connections, establishment of freight rates, joint service, joint switching facilities, car service, interlocking signals have been fair to the public and beneficial to the carriers.

#### KENTUCKY.

The Commission in Kentucky has issued no order embarrassing the carriers in their operation. The public has been benefited by the Commission using its offices in the settlement and adjustment of many informal complaints and by securing refunds on improper rates charged. The public has been benefited by the Commission's orders which have reduced coal rates to almost one-third of the State and which has resulted in the reduction of rates on grain embracing a large portion of the State. The public has been benefited by certain orders of the Commission relative to improper depot facilities; but has been denied full benefits incident to a public service commission on account of its restricted jurisdiction.

#### LOUISIANA.

No response to these inquiries.

#### MAINE.

The Commission has stopped the practice of special legislation for and against common carriers. It has resulted in a better understanding between the public and the carriers. The Commission's activities have eliminated rebating, special rates, free transportation and discrimination. Our activities have caused better service and more courteous attention on the part of the carriers. Some rates have been reduced and physical connection between electric

carriers and steam carriers will result from our efforts. Our orders have not resulted in embarrassing the carriers, nor have they resulted in inconvenience or expense to the public.

#### MICHIGAN.

The Commission's activities are inseparable from the benefits of the government. Informal letters adjudicate controversies between the shipping public and the carriers. In its administrative capacity it safeguards the public interest and prevents the issuance of securities except upon a proper showing and it exercises police power in protecting the public. It handles informal matters and is a forum for the public to have their grievances relieved and to receive advice. It stands as a body with the State at its back to meet the organized power of the great corporations. It has issued no orders which have resulted in embarrassing the railroad companies in their operations. Some orders entailed expense to the carriers but they are necessary for the public welfare. No orders have resulted in inconvenience and expense to the public not warranted by the facts. The administrative results of the Commission have improved the status of the carriers as the great arm of industrial and economic life. It is the arm of the government through which the carriers may appeal to the State to show their needs and discuss their aims and purposes; and the Commission assists in devising means to advance the general welfare.

#### MINNESOTA.

The Commission acts as mediator between the shippers and the carriers. The Commission has frequently shown the shipper that the position of the carrier was correct and he has become satisfied. Business relations between the carriers and the public have been improved. The number of complaints is gradually being reduced. The shipper receives the benefit of the prompt and effective service of the Commission and through the Commission results are obtained that the shipping public could not obtain otherwise. The Commission has never issued any order that could embarrass any carrier in its operation. It has issued orders which have resulted in the safety and comfort of the public but none which have resulted in inconvenience to the public. The Commission's order promulgating a maximum scale of rates resulted in benefit to the carriers, it has removed all discriminations and has made a stable basis for rate-making allowing the carrier reasonable compensation for its services.

#### MISSOURI.

Does not know of any orders which it has issued which results in embarrassment to the carrier in its operation or which has resulted in inconvenience and expense to the public.

## MONTANA.

Does not know of any order which the Commission has issued resulting in embarrassment to the carrier in its operation or inconvenience and expense to the public.

## NEBRASKA.

States that formal orders issued by the Commission have been regarded by the carriers as embarrassing in as much as they resulted in favor of the complainant. Carriers have been permitted in some cases to cancel train service and to put in rules which have at times inconvenienced some shippers; that in some instances rates have been increased with the approval of the Commission. Some applications have resulted in admitted benefit both to the shipper and the carrier, to-wit: The Commission's order requiring the return to originating roads cars received in switching service at point of interchange.

## NEW HAMPSHIRE.

States that its order prescribing maximum freight and passenger rates on the Boston & Maine benefited both the carrier and the public. It removed discriminations and established equitable rates between different classes of commodities. The Commission's activities have resulted in greater safety at crossings and in road equipment and improved conditions of stations. The Commission's most valuable function is not the specific things which it does do but the fact that its existence assures the public fairer and more reasonable treatment. No orders of the Commission have resulted in embarrassing the carrier in its operation or in inconvenience or expense to the public. The Commission has improved the method of train dispatching and has inaugurated a system of inspection of dispatchers, orders and instructions and examinations in all classes of railroad employes. The inspection of the Commission has caused improvements in the tracks, bridges, stations and equipment of the carriers which has prevented accidents and caused more efficient operation of the roads.

## NEW JERSEY.

Does not specifically answer the questions propounded

## NEW YORK.

States that her orders have been of some benefit to the parties directly concerned; that no orders of the Commission have resulted in genuine embarrassment to the carriers unless

a refusal to permit carriers to increase rates embarrasses them. No orders of the Commission have resulted in inconvenience and expense to the public. No specific benefit to the carriers cited as a result of the orders of the New York Commission but it is their judgment certain recommendations which they have made have been serviceable to the carriers.

#### OHIO.

States that the activities of her Commission have resulted in a better understanding between the public and the carriers; that no order gave embarrassment to a carrier in its operation and none have resulted in inconvenience or expense to the public; but that its orders have been beneficial to the carriers as well as the public.

#### OKLAHOMA.

States that the activities of her Commission have resulted in a better understanding between the public and the carriers and that no order has resulted in embarrassment to the carrier in its operation; that its orders have been beneficial to both the shipper and the carrier; that its orders have not resulted in inconvenience or expense to the public; but it has made many orders to relieve the public of both inconvenience and expense. Has required railroad companies to install telephones in depots. It has required carriers to build adequate and comfortable depots, to bulletin trains, to properly heat and light depots and to extend to the public adequate accommodations and facilities.

#### OREGON.

Makes no specific response to the inquiries.

#### PENNSYLVANIA.

Makes no response.

#### SOUTH CAROLINA.

States that the results of the activities of the Commission have been uniformly beneficial, as evidence of which no appeals have been taken from the orders of the Commission. No orders have been issued which result in embarrassment to the carriers in their operation or expense or inconvenience to the shipping public.

#### VERMONT.

States that the orders issued by the Commission have been satisfactory as but three appeals have been prayed from its

decisions. One case was where a new depot was ordered and the other two related to telephone rates. No orders of the Commission have resulted in embarrassment to the carrier in its operation and none have resulted in inconvenience and expense to the public.

#### VIRGINIA.

States that the relations between the shipping public and the carriers has been freed from friction; that no orders have resulted in embarrassment to the carriers in their operation, nor have they resulted in inconvenience and expense to the public.

#### WASHINGTON.

States that considerable benefit has accrued to both the shipping public and the carriers from orders made by its Commission. Adequate facilities have been provided, dangerous crossings have been eliminated, tracks and equipment have been improved. No orders have resulted in embarrassment to the carrier in its operation or inconvenience or expense to the public.

#### WISCONSIN.

States that it is difficult to say just what benefits the carriers and the shippers have experienced as a result of their orders but that all orders have resulted in some benefit to the shipping and traveling public; that the carriers have been embarrassed in their operations in carrying out the orders of the Commission but only temporarily for in the end they have resulted in benefit to the carriers.

#### WYOMING.

States that considerable benefit and convenience to the shipping public results from the activities of its Commission in settling matters referred to and that no orders have resulted in embarrassment to the carrier in its operation or expense or inconvenience to the public.

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The other inquiries contained in the letter forwarded to the various State Railroad Commissions are as follows:

(e) State what, if any, difference there is between state and interstate rates?

(f) What orders of your Commission have produced conflicts of authority with the Federal government, or with sister

States? Explain fully the cause of such a condition if any exists?

(j) In your judgment is it a wise governmental policy to centralize the power of regulation and control of common carriers exclusively in the Federal government?

(k) Make any other statement concerning related subjects and questions not embraced in the above inquiries which you deem appropriate?

#### ALABAMA.

We have made no decision that has produced any conflict between the Federal government and the State government. Federal control of State affairs is most undesirable. It is inconceivable that a Federal body should undertake to hear all the petitions that would come up in the various States relative to service, construction of side tracks, building of new depots, establishing schedules, requirements for trains. There are certain State rights which are inviolate and the regulation of purely intrastate rates and service is one of them.

#### ARKANSAS.

Does not think it is the best policy to centralize the power of regulation in the Federal government.

#### CALIFORNIA.

States that there is no difference between the state rates and the State's portion of the interstate rates. The carriers, acting under the advice of the Commission, eliminated the difference between such rates. The carriers reduced the interstate rate to correspond with the intrastate rate. No conflict has existed between our State and the Federal government or any sister State. No position was taken on the policy to centralize the power of regulation or control of common carriers exclusively in the Federal government. The response says, however, that the carriers almost without exception are co-operating with the Railroad Commission in the work of regulation and supervision and almost uniformly accept the Commission's decisions without recourse to the Courts. This fact would seem to be evidence that the carriers in this State are not being seriously prejudiced, interfered with or embarrassed by the action of the State Railroad Commission.

#### CONNECTICUT.

States that there is practically no difference between the state and interstate rates. The interstate rates prevail. As to

centralizing the control of common carriers Connecticut says, "I would say on general principles, 'No' especially as pertaining to the common carriers doing exclusively intrastate business". The report adds further, "with the growing interstate business it may be found advisable, in order to avoid conflict of authority and duplication of orders, that all common carriers doing an interstate business should be chartered under the Federal law".

#### GEORGIA.

States that her local mileage intrastate freight scale is higher for local intrastate traffic moving a given distance than the intrastate proportion of an interstate through rate for traffic moving the same given distance in Georgia. That he recalls no instance of conflict of orders or authority of the Georgia Commission with the Federal government; but that at present there is a petition filed by the carriers of Georgia to revise the Georgia intrastate freight rates in line with the recently effective interstate rates in compliance with what the carriers assert was the result of the Fourth Section order of the Interstate Commerce Commission relating to interstate rates; that the issues raised in this petition involve the relation between state made rates and interstate rates in the Southeast and into Georgia and that the possibility of a conflict might occur as a result of the opinion of the Georgia Commission. In the opinion of the Georgia Commission it is not wise or practicable to centralize the control of common carriers in the Federal government. The Commission states that no central body at Washington can effectively exercise supervision over the vast national territory and ever increasing railroad systems; that in such an event only the highest spots of regulatory needs would be touched, delays in judgments would be inevitable and the expense too large; and many other reasons are cited.

#### IDAHO.

Says that it favors centralizing the control of common carriers in the Federal government but only in so far as rates are concerned; and that no conflict of authority exists as a result of any orders entered by the Idaho Commission between that State and any sister State or the Federal government.

#### IOWA.

States that it is hardly fair to compare a state rate to a part of a through rate. In the former case you are taking care of two terminals and in the latter case only one; that for similar distances the Iowa state rates are higher than the parts of the interstate rates. The Iowa Commission thinks it would be



extremely unwise to centralize the regulation of railroads in the Federal government and the arguments opposed to centralization advanced by the Commission will be found in the minutes of the meeting of the National Association of Railway President's address, Hon. Clifford Thorne, reported in the minutes of the meeting of the National Association of Railway Commissioners, held in San Francisco, November, 1915.

#### KANSAS.

States that the interstate and intrastate rates are practically the same. The Commission does not believe it would be a wise governmental policy to centralize the power and control of common carriers exclusively in the Federal government. Many reasons are offered in opposition to the proposed policy of centralization. Among others it is alleged that in case of centralized Federal control of railroads the small shipper would be entirely lost sight of; that the central board would have time only to consider large cases and the interest of small localities and individual shippers would be lost sight of.

#### KENTUCKY.

States that some of the interstate rates are higher than the intrastate rate which forms a portion of the through rate. That it would be an unwise governmental policy to centralize the control of common carriers in the Federal government. In opposition to this policy the Chairman of the Kentucky Railroad Commission made an argument before the National Association of Railway Commissioners in 1913 which address is referred to. It would be difficult to frame a governmental policy nationalizing common carriers and at the same time giving the necessary local jurisdiction over common carriers which are incorporated by the Federal government. Such a policy would no doubt result in practically all complaints of a civil nature being transferred from the State Courts to the Federal Courts and State laws and State policies which have been settled according to the wishes and will of a large portion of the Nation would again become the subjects of discussion and agitation. The separate coach law and many other State policies might be annulled as the result of Federal incorporation and the social and commercial uncertainty incident to such a radical governmental policy would more than offset whatever imaginary benefits might result to the carriers from such a political propaganda. Resolved to its last analysis the proponents of the policy hope to derive two benefits for the carriers. First, additional revenue as a result of increased rates. Second, a reduction in taxes. If the country could be made to understand that these two objects represent the purpose of the carriers the proposed policy would be easily defeated by a

large majority of the people; unless the carriers already control directly and indirectly a sufficient number to accomplish their purpose, which fact is alleged by the Hon. Howard Elliott, of the New York, New Haven & Hartford Railroad Company, in an address to the Chamber of Commerce of the United States on February 8, 1916. President Elliott alleges that the total number of people directly and indirectly controlled or influenced through the financial operations of the carriers total 61 millions; while the Hon. A. J. County, Vice President in charge of accounting of the Pennsylvania Railroad Company, in an address delivered to the Philadelphia Credit Men's Association on October 24, 1916, alleges that this number thus controlled is upwards of 50 millions.

#### LOUISIANA.

States that the experience of her Commission is absolutely convincing that the power of regulation and control of common carriers by the individual States is most important to the shippers and the traveling public. That to centralize the power of regulation and control of common carriers exclusively in the Federal government would be an unwise governmental policy.

#### MAINE.

States that proportional rates are published in order to protect traffic that may move in the business of joint or through rates and may be lower than the local rates for the same distances; that occasionally carriers are obliged to apply local rates to junctions on State and interstate shipments; that in the case of joint through rates applying to either the intrastate or interstate business the divisions of such rates are invariably lower than the local rates of carriers for similar distances. That there is no instance where there has been any conflict with the Federal authorities or with a sister State. Maine says, "We do not think that all control of steam railroads within this State should be centralized in the Federal government; that the territory to be covered is relatively small and intimate knowledge of local conditions could be readily obtained and existing evils remedied. That the Interstate Commerce Commission could not be organized large enough to take care of all these minor matters unless a full organization was maintained in each State. If this was done it would simply in effect be a State branch of the Interstate Commerce Commission and we cannot see how that branch could better serve the interest of the public and the carriers than could the State Commission. The State Commission in Maine would still have to exist and carry on its work, and the added burden of 16 railroads, while considerable, fits in with the other work".

## MINNESOTA.

States that at one time it advocated giving the Federal Commission control of the whole subject of regulation and control of common carriers; but that a more careful study of the question has convinced the Commission that it was wrong. A splendidly written four page argument is presented in opposition to the policy which is here referred to.

## MICHIGAN.

Says that it knows of no orders of the Commission that have produced any conflict with the Federal authority; that in the judgment of the Commission it will not be a wise policy to centralize the regulatory control of common carriers in the Federal government. To eliminate State control will result in widening the gulf between the big corporate units and the people. The general welfare can best be served by the opposite effect. It may be feared that minor cases so far removed from the people will result in the further eclipse of the individual with the corresponding strengthening of the position of organized industry. There can be no good reason why the present arrangement cannot continue. If Congress eliminates in part the present functions of State Commissions the result will be to weaken the position of the States in dealing with these purely State details. In a general way it may be said that the more extensive the jurisdiction of State Commissions, that is the greater their knowledge of all the phases of the carriers' problems, the better they are fitted to administer minor details. Let us further add that this subject brings up again that old principle which figured in the adoption of the United States Constitution. The principle of State sovereignty and we believe that further restriction of State jurisdiction will not be conducive to the common welfare.

## MISSOURI.

States that it is not a wise governmental policy to centralize the power of regulation and control of common carriers exclusively in the Federal government.

## MONTANA.

Answers likewise. "In the first place", says the Montana Commission, "the Interstate Commerce Commission is too far removed and not acquainted with local conditions". Montana says that the Federal Commission has already shown a disposition to discriminate against the Rocky Mountain States to the benefit of territory both to the East and West, as evidenced

by the Back Haul Rate Case and the creation of the Fourth Zone in Express tariffs.

#### NEBRASKA.

States that if the question contemplates the retention of the present system of Federal regulation and control that its answer will be "No". The Nebraska Commission cites an instance where the Interstate Commerce Commission has already attempted to control intrastate rates. It refers to the case of the town of Torrington vs. The Chicago, Burlington & Quincy Railroad Company, I. C. C. Case No. 7803. The Nebraska Commission states that this was a complaint brought by the town of Torrington, Wyoming, in which it was alleged that the defendant was guilty of unjust discrimination in that it maintained from Torrington to Omaha a higher schedule of rates than it maintained from Henry, a town across the line. The Interstate Commerce Commission found the complaint justified and without notifying the Nebraska Commission held the rates from Torrington to be reasonable and therefore the rates from Henry to be unreasonable. An order was entered to remove the discrimination. The discrimination was removed by raising the lower rate. The report of the Interstate Commerce Commission exhibited such an amazing lack of information as to local conditions and betrayed such a hasty consideration of the issue (even to the extent of bald mathematical errors) that the Nebraska Commission declined to approve the rates from Henry to Omaha as applied for by the Burlington. We attach herewith a copy of the findings and order in the case, application 2875, which furnishes a complete statement of the case and the reasons for denial of the application.

#### NEW HAMPSHIRE.

States that as to capitalization it has no objection to interstate control but as to local services and accommodations State control is indispensable. That it is of great importance to the people of New Hampshire that they should have some body acquainted with local conditions to pass on local rates and if necessary to represent the shippers before the Interstate Commerce Commission.

#### NEW JERSEY.

States that in her opinion the power of regulation and control of railroads should not rest exclusively in the Federal government; that a conflict of the statutes governing the railroads, of course, is undesirable, but that it does not seem necessary to divest the States of their rights because such conflicts may

occasionally occur. It is much to be desired that a system of rates applying to the transportation of passengers and freight shall be harmonious, but it is also to be desired that the rates shall be reasonable. In a passenger rate case tried before the State Commission at the first hearing the carriers sought an increase upon the ground that they needed additional revenue for their system as a whole. This was denied. On a rehearing they sought to justify the increase by testimony as to the revenues and expenses applying exclusively to intrastate traffic. If it appears to the Commission that the increases are justified and they should be allowed there would be harmony between interstate and intrastate rates; but if the increases are not sustained there will be a conflict. The Commission says, "Whatever the outcome may be the reasonableness of the proposed increases is worthy of consideration and this is more important than an incidental conflict. The Interstate Commerce Commission refused to suspend the increases at the suggestion of the New Jersey Commission, therefore there would have been no investigation as to the reasonableness of these increased rates which materially affected the State of New Jersey but for the action of the New Jersey Commission".

#### NEW YORK.

States that certain members of the Commission are united in the belief that certain elements of regulation should be centralized in the Federal Government. On the other hand many elements of regulation can be better exercised by the State Commissions.

#### OHIO.

States that it is opposed to centralizing the control of common carriers in the Federal government. States that there is but one instance in which there has been an order entered by its Commission which has been set aside by the Federal Courts and that was a rate on coal fixed from the eastern Ohio fields to the Lake and the Federal Courts held as the traffic was for trans-shipment the Commission had exceeded its authority.

#### OKLAHOMA.

States that it would be an unwise governmental policy to centralize the power of regulation and control of common carriers exclusively in the Federal government and that the Commission is unalterably opposed to any move which has for its aim that end. In opposition to the policy of centralized control I file herewith a splendid address made by the Hon. George A. Henshaw.

## OREGON.

States that there is no public sentiment and no expression on the part of the railroad management in Oregon for a change from State to governmental control of regulation. Oregon states that it believes that the best interest of the people of any State can be better safeguarded and more expeditiously controlled under State regulation than under Federal regulation.

## PENNSYLVANIA.

States that it would be a wiser policy to centralize a great deal of the power of regulation exclusively in the Federal government; but where or how the line could be drawn it does not know.

## SOUTH CAROLINA.

States that it is opposed to centralizing the power of regulation of common carriers in the Federal government; but if the powers now vested in the several States are taken away and centralized in the Federal government then government ownership would be far better.

## VERMONT.

In answer to the proposal to centralize the control of common carriers in the Federal government the Vermont Commission answers most emphatically, "No".

## VIRGINIA.

Says that it would be an exceedingly unwise governmental policy to centralize the power of regulation and control of common carriers in the Federal government. Virginia believes that such a policy would practically relieve the carriers of regulation and control as to many important matters now regulated by the States. If such matters should be taken up by the Federal government it would result in building up local Federal agencies to take the place of agents of the State without reducing expenses or increasing benefits.

## WASHINGTON.

Says that while exclusive Federal control would no doubt tend to more uniformity in rates and service and eliminate considerable expense to the carriers in accounting and classification, yet she doubts if the administration would be less expensive to the public or the control more effective. The States

are already working towards more uniformity of laws between themselves and the Federal government. Washington says she is not disposed to look with favor on exclusive Federal regulation at this time, although a law creating a larger federal body with the country districted and some concurrent jurisdiction of the state commissions over state matters might meet with favorable consideration.

#### WISCONSIN.

Says it would not be wise to centralize all the power of regulation and control of common carriers exclusively in the Federal government; that the Federal government could handle the question of stock and bond issues for interstate carriers better than various State Commissions. So far as rates are concerned Wisconsin believes that it could be arranged so the State Commissions could work in closer harmony with the Interstate Commerce Commission; that it would not favor taking away from the Wisconsin Commission jurisdiction over intrastate rates and giving such jurisdiction to the Interstate Commerce Commission.

#### WYOMING.

States this Commission, not from a personal standpoint but taking the general view, would be opposed to a governmental policy which would centralize the regulation and control of common carriers exclusively in the Federal government.

I also file with this report the report of the state commission of North Dakota, which state is also opposed to centralization; also the report from the Texas Railway Commission, which came subsequent to the typewriting of our report.

Now there is just one more feature to which I desire to call attention, which I have attempted to emphasize frequently before this Association. That is that it is absolutely improper to consider the motives behind a commission which prompts it to make a certain order. You can take the case decided by the Circuit Court of Appeals, the Gamble-Robinson Commission Company vs. the Chicago & Northwestern Railway Company. The facts in that case were these: The interstate carrier required to prepayment of charges for transportation on property conveyed to the complainant, while it did not require charges to be prepaid on freight consigned to others similarly situated. The court held that the fact that the carrier, for the purpose of injuring the business of consignee, or harassing it, subjected it to a prejudice or disadvantage which is neither undue nor unreasonable, does not change the nature of the prejudice or disadvantage, or create any cause of action.

By the same analogy the motives which prompt a state commission to fix a given intrastate rate are neither a subject of inquiry nor a matter which should be considered in investigating the order of the Commission, the only inquiry being, is the rate just and reasonable, measured by the testimony? Was there sufficient proof to sustain the order of the Commission?

Now in this disconnected way I have endeavored to present to this Association some of the facts which moved the Committee to draft the resolution, just for the purpose of having this Convention, if possible, crystallize its sentiments with reference to these questions.

There is no particular pride in the language used, the object being to get a resolution that will in substance reflect the sentiment of this Association. No doubt other resolutions have already been presented to you that may meet with your approval, but the Committees offer this as one of the resolutions for your consideration.

Be it resolved by the National Association of Railway Commissioners in convention assembled:

1. That we hereby endorse Senate Bill No. 5542 of the Sixty-fourth Congress, First Session, said bill being amendatory to the Act to Regulate Commerce, and carrying out the provisions of the Williams Resolution passed by this Association at its annual convention held in the year 1914.

That is the first resolution that we will present; and as the Committee, just prior to this report, familiarized this Convention with what the Williams Resolution was, and also with what the Sheppard amendment is, I suppose it will not be necessary to call them anew to your attention. So gentlemen, as the first recommendation of this Committee, I move the adoption of this resolution in the spirit that I have already indicated.

Mr. RICHARDS, of South Carolina. I second the motion for the adoption of that resolution.

The PRESIDENT. Gentlemen, you have heard the motion and the second. Is it your desire, Mr. Commissioner Finn, that these matters be taken up and disposed of one by one?

Mr. FINN, of Kentucky. One by one, yes, so that we can separate the various problems or recommendations that we make.

Mr. EMMET, of New York. May I ask whether any of the subsequent proposals would be likely to affect this one?

Mr. FINN, of Kentucky. No, there is no subsequent resolution which conflicts with this.

The PRESIDENT. Gentlemen, Commissioner Finn moves, and it has been seconded, that the resolution which he has read be adopted. What is the wish of the Convention in connection with this matter?



Mr. EMMET, of New York. Mr. President, I regret to say that I am called to New York by an imperative engagement, and shall possibly have to leave before the vote is taken on this resolution, or before the matter has been fully discussed. I dislike leaving without at least putting myself on record, very briefly and informally, on the substance of the resolution as offered.

The commission of which I am a member, in answering Mr. Finn's original inquiry, stated only very generally the view we took of the matter, and as a commission I think we fully decided, and will adhere to that decision, to take no positive stand, although I think it was well understood by all the members of the commission that as individuals we were not only at liberty to express our individual views, but that it might become our duty to do so.

It seems to me that in approaching the question under discussion there are one or two points which perhaps have been the subject of some confusion, which I think should be cleared away.

In the first place, it does not seem to me that there can be any question whatsoever as to the intention of the original founders of the republic with regard to the question of state rights and federal rights. Mr. Finn's statement on that point is beyond any question historically correct. Therefore in discussing what is now before us, I think we must not suppose there can be any doubt as to where the country stood at that time. We all admit that with the exception of a very small handful of men, the fathers of the republic were extremely jealous of state rights, and that the Constitution was framed in the spirit of a desire to preserve our state rights, granting only certain specific powers to the National Government. I think we must frankly admit that if there is to be a departure from that spirit now, it is a real change, and not merely a new interpretation of the meaning of the original ideas on the subject. Those who believe that there should be a modification of the popular attitude on that subject do not claim, I think, that their present position entirely accords with the public sentiment of the former time. I personally think there should be a substantial change in the popular attitude toward the question of state rights as generally understood, but I do not contend that what I desire is in line with what was first the view of the country in regard to that. I think the changes which have occurred since the foundation of the republic are of such a fundamental and monumental character, so far reaching as to have created a new question, which we can look at and pass upon without being bound absolutely by conditions as they existed one hundred and twenty-five or one hundred and thirty years ago.

I do not think, either, that there is any question as to what is the attitude of the large railroad corporations at the present

time with regard to the matter that we are discussing. Mr. Finn read certain extracts from public newspapers, tending to indicate that there was a systematic agitation on foot in favor of this change. It does not seem to me that that is a matter of doubt, or that it is particularly relevant to the question. From my point of view I assume, and I know it to be a fact, that the large railroad corporations of the country are actively, and as I understand it openly, engaged in an endeavor to bring about a substantial modification in the relationship between the state and federal governments. I think we can assume both these facts in approaching this question; first, that one hundred years ago there was a very different point of view with regard to state rights than there is at the present time, and second that the railroads of the country are now openly and actively engaged in an effort to modify the old relationship between the states and the nation. Personally I do not look upon such efforts on the part of the railroad corporations as necessarily malign or diabolic in any sense of the word. The fact that they are so engaged does not create, in my judgment, any special implication that their activities are nefarious. Let us look at the merits of the proposal that they make, and if it is a good proposal, I see no reason why they should not actively seek to bring it about.

Now it seems to me that the question whether it is desirable or not that there should be a larger grant of powers to the Federal Government, and some restrictions placed upon the present powers of the state governments, can be approached by an effort to view the situation on the assumption that governmental ownership, rather than private ownership of railroads and public utilities, was the order of the day. Assuming for the moment that we had governmental ownership of our public utilities rather than private ownership, would we then conceive it to be desirable that governmental ownership should be exercised by the forty-eight states rather than by the Federal Government? What is here proposed seems to me to be to ascertain the correct principle in the first place as between state and federal activity, and then to apply it to the fact that railroads are now owned by private capital and operated by private enterprise. We have a condition of private ownership, and it seems to me that the underlying principle controlling the part that government should take in the matter can best be ascertained by determining what function of government should be employed to operate the railroads in case we had governmental ownership. Now the nation has not yet determined, nor have any of the states determined that it is wise to substitute governmental ownership for private enterprise and activity. So that, accepting the fact that the railroads are to be run by private enterprise, let us see which course that is now proposed to us will be the

more helpful to the operation of the roads from the standpoint of the public.

In the case of governmental ownership it seems to me there could be no question but what such ownership would have to be exercised, in the case of our large interstate common carriers, by the federal authorities, and in the case of private ownership subject to proper and efficient regulation, is seems to me that the general principle is the same, that the federal authorities ought, to a large extent, to have vested in them the powers of regulation. We in New York State have decided differences in our rate schedules as applied to intrastate and interstate traffic. While the reports which Mr. Finn has read would indicate that this is not a general condition throughout the United States, I think the likelihood of its occurring at any time and in a very large volume is more than a theoretic likelihood. It seems to me that it is a practical danger; and I speak of it as a danger because I conceive it to be beyond dispute that a large variation throughout the United States between intrastate and interstate rates is undesirable. In the state of New York, merely to mention a case in point, a traveler from New York City to Chicago, in going from New York City to Buffalo over the New York Central Railroad, pays two and one-half cents a mile. A traveler from New York City to Buffalo who does not intend going beyond Buffalo, pays from New York City to Albany I think about 2.17 cents per mile, and from Albany to Buffalo two cents a mile, showing a very decided contrast in the cost of the trip from New York City to Buffalo, depending on whether the trip is taken by one who is going beyond the state line or not. The other roads that run from the City of New York to Buffalo, but which pass through the state of New Jersey or Pennsylvania in reaching Buffalo, now charge two and one-half cents a mile for the trip from New York City to Buffalo, whereas the traveler by the New York Central pays the lower intrastate rate which I have mentioned. I cannot help feeling that that is a fundamentally discriminatory condition of affairs. In this case of which I speak, the discrimination may be said to be in favor of the residents of the State of New York, and therefore possibly from that point of view a New York official ought not to object; but it is a bad and theoretically unsound condition of affairs, and from the viewpoint of the private capital and ownership which is operating the road I can well understand that they regard it as meaningless, and without any justification on theoretical grounds.

And it seems to me that even if that condition of affairs does not exist to a large extent throughout the rest of the country at the present time, there is considerable force in the suggestion that definite action by this Convention on this point will rather encourage in the future a pretty widespread action by state legislatures and regulatory bodies in the interest of their several

states, and in the direction of rates lower than those permitted under federal control, and that is a tendency which it seems to me can conceivably be carried to a point which will lose sight of the larger needs of the situation, and which will be dictated in some cases perhaps largely by local considerations, which should not in all cases apply. That is as to the question of rates.

As to the question of incorporation, and powers over the incorporation of common carriers doing interstate business, and powers over their capitalization, it seems to me that but little can be said in defense of some of the workings out of the present situation. A railroad may require to make a small bond issue, or perhaps to guarantee the bonds of some minor road. A case of that sort has recently been before the New York Commission; and in order that that shall be done legally at the present time, in the case of, we will say, the New York Central Railroad, which is the main interstate carrier that we in New York are familiar with, it is necessary for that railroad company to go before seven or eight different state commissions.

Mr. THORNE, of Iowa. Capitalization is not included in this resolution.

Mr. EMMET, of New York. That is true, and I only mention it as bearing on the general question we are discussing. As a matter of fact I had rather assumed that as there was no discussion of the report on capitalization presented by the gentleman from California (Mr. Edgerton), the discussion of the two questions would to a large extent be merged in a general discussion of this question of federal vs. state control.

The PRESIDENT. I understand that the Commissioner from New York (Mr. Emmet) finds it impossible to remain here longer, and as a matter of courtesy to him, unless there is objection, he may go into the question of capitalization also.

Mr. EMMET, of New York. I have practically made the point I wanted to make, that I think the present situation with regard to capitalization is pretty cumbersome from any practical standpoint, and that in the case which I have started to outline, of an application of the New York Central Railroad Company to several state commissions, one slip-up in a single jurisdiction, one condition of state laws which might render the proposal unlawful in a particular state, would defeat the proposition in its entirety, in its relation to other states whose state laws permitted it, and whose regulatory bodies were impressed with the merits of the proposition; still the existence of some obscure state law in one of the states traversed by the carrier would defeat what we may assume for the purposes of the argument to be a meritorious capitalization proposal along the entire line.

Now it is to prevent this sort of thing that, as I understand it, the sentiment has gradually been developing in favor of vesting

larger powers in the Federal Government; and I for one am inclined to view the tendency with considerable pleasure.

In regard to the specific proposition of incorporation and the specific proposition of capitalization, I desire to express myself as unqualifiedly in favor of vesting those powers in the Federal Government. With regard to the question of rates, I feel that to a large extent the same arguments apply, although I was impressed with the precise manner in which the point of view of the Wisconsin Commission was stated in the extract from their reply read by Mr. Finn,—that as to rates some larger system of harmonious action between the federal and the state commissions should be, and can probably be, worked out, but that the state commissions should not, at present at least, be stripped of all their powers over rates.

In everything I have said I have intended to confine my remarks entirely to interstate common carriers. Speaking for myself I doubt very much whether, if our powers as a state commission were modified to the extent that has been proposed, it would seriously affect the volume of our business or the amount of necessary work which our state commission would have to perform. I do not view the question at all as involving the abolition of state commissions. The functions of the state commissions are extremely useful ones, and become more so every year, with relation to domestic utilities particularly, and therefore in everything I have said I have assumed the continued existence of our state commissions, and in the case of New York, substantially the same volume of business for our Commission as it has today; but from the point of view of an orderly administration of this enormous transportation problem, I personally favor the enlargement of the powers of the federal commission, and some diminution of the powers of our state commissions.

The PRESIDENT. It occurs to me that it might be desirable, so that we may all realize exactly what is before us, that Senate Bill No. 5242, which I understand is the Sheppard Bill, be drawn specifically to the attention of the Convention. Could you favor us, Mr. Stutsman, by reading to us that specific bill?

Mr. STUTSMAN, of North Dakota. That bill was not incorporated in the report.

The PRESIDENT. Perhaps Commissioner Finn will read it.

Mr. FINN, of Kentucky. The Sheppard Bill is as follows:

*"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the Act entitled "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and Acts amendatory thereof, be, and the same is hereby, amended by adding, after the proviso in section one, the following: 'And provided further, That nothing in this Act, nor the exercise of any authority by the Interstate Commerce Commission by virtue thereof, shall absolve any railroad or other common carrier from obeying any rate, rule, regulation or*

practice of any State with respect to the transportation of passengers or property, or the receiving, delivery, storage, or handling of property wholly within one State and not shipped to or from a foreign country, from or to any State or Territory as aforesaid, unless and until such common carrier shall have secured the judgment of a court of competent jurisdiction holding such rate, rule, regulation or practice imposed as aforesaid, to be unreasonable."

The PRESIDENT. That bill, as I take it, Mr. Commissioner Finn, is the bill that is referred to in this resolution now before us?

Mr. FINN, of Kentucky. Yes.

Mr. EDGERTON, of California. May I get a little information? I want to vote on this resolution intelligently, and I am wondering if the question of state vs. federal control is squarely put before the Association by this particular resolution? My puzzlement comes from this: Apparently this resolution assumes that the present condition of the law will remain, that is to say the division between state and federal authority, except that it seems to be designed to prevent a repetition of the Shreveport case, so to speak, and perhaps some others; and I take it that the effect of this bill if adopted would be this—I should like to be corrected if I am wrong—that a court declaring a given rate to be unreasonable, of course would kill that particular rate, and the Interstate Commerce Commission would have nothing further to do with it. In other words, apparently the effect of it is to withdraw entirely the consideration of a particular state rate from the Interstate Commerce Commission, because it says "until a court shall have decided it to be unreasonable or unlawful," which would kill that rate. I take it that the frank purpose is to prevent the Interstate Commerce Commission from interfering with the state rates. Am I right about that, Mr. Finn?

Mr. FINN, of Kentucky. Yes, it is practically intended to repeal the Shreveport case.

Mr. EDGERTON, of California. Now, what about the other suggestion, that this is designed to raise the whole question of state as against federal control of rates?

Mr. FINN, of Kentucky. In effect that is it.

Mr. CLARK, of the Interstate Commerce Commission. Mr. President, I do not care to attempt any discussion of the merits of this proposition, but I feel that I ought to correct a false impression that may have been given to some by what Mr. Finn said with regard to that complaint of the town of Torrington.

Mr. FINN, of Kentucky. Mr. Commissioner, just a moment. You must remember that that was a quotation.

Mr. CLARK, of the Interstate Commerce Commission. I know it was a quotation from what was said by the Nebraska Commission in response to that inquiry.

Mr. FINN, of Kentucky. That is correct.

Mr. CLARK, of the Interstate Commerce Commission. But in the minds of those present who were not acquainted with all the facts, what was said by you might be taken to represent the full facts. I simply want to say that by an unfortunate clerical oversight the Nebraska Commission was not in that case notified officially by us of the pendency of that complaint. Second, the Supreme Court has said that we must decide these cases on evidence contained in the record, and we find occasionally that misinformation or incorrect statements of fact appear uncontradicted in the record. I have in mind one case which I had occasion to study pretty closely, in which the complainant alleged that the distance from one point to another point was a certain number of miles, and that the rate was a certain number of cents. The carrier on the record admitted the truth of both statements. The fact, according to the tariffs and the official distance tables of the carriers, was that neither the distance nor the rate was correctly stated and admitted. Through that course some error crept into the record and the report in the Torrington case. But more important than all, and the point I wanted especially to call to the attention of those who have heard this criticism, is that as soon as the Interstate Commerce Commission learned that the Nebraska Commission had not been notified, and that the Nebraska Commission took exception to some of the facts as stated in the case, on its own motion the Interstate Commerce Commission struck off its order and ordered the case opened for rehearing.

The PRESIDENT. Is there any further discussion?

Mr. THORNE, of Iowa. I do not know whether it is necessary to go into a discussion of the proposition involved in this resolution or not, suggested by the gentleman from New York (Mr. Emmet). It has been threshed out very extensively by this Convention before, and it has been very ably discussed both by our retiring President, Judge Prentis, and by the Chairman of this Committee, Mr. Finn.

There is one proposition, however, suggested by our friend from New York (Mr. Emmet) to which I desire to refer. To my mind the function of government is not that of conducting a business, primarily. The function of government is to govern; and if you can get better results from this dual system than from a great centralized power, the dual system ought to be preserved. What you are advocating is the abandonment of the fundamental characteristic of our government that makes it unique in all history, which combines home rule and a great central power. This is very concretely illustrated by cases that have arisen.

Any gentleman who would stand here and attempt to review decisions by the Interstate Commerce Commission would be at-

tempting a very huge task. You ought to hear both sides. You ought to hear from the representatives of the Commission, and they might be very reluctant about stating their grounds, as it is not customary for them to discuss the wisdom of their own decisions after rendering them. I am not going to attempt to attack or review the decisions by the Commission in an effort to show why we should have the dual system. However, I did have a list of cases drafted, wherein there had arisen conflicts between state-made rates and rates that were interstate in character. I do not claim that the state commission is always right, but in examining these cases I have found eleven cases wherein such conflicts have arisen, in cases pending before the Commission. Some of those cases are unsettled. One or two have been reopened; but I have not found one instance where the Interstate Commerce Commission adopted the rates established by the state commission, alleged to be discriminatory as against the interstate rate, whether that interstate rate was fixed by a railroad, or fixed by the Interstate Commerce Commission.

The only point I make in regard to that is that our batting average is very low. In not one instance have the conclusions of our commissions been found just and reasonable.

In a Nebraska Commission case, not the one to which reference has been made, the state commission spent several years in investigating, with their experts, and very able men who have devoted a number of years to this line of work. By the decision of the Interstate Commerce Commission that schedule is practically wiped out. The carrier is not required to conform to the rules that the Supreme Court of the United States laid down as necessary before a state schedule could be overturned. True, the Minnesota rate case concerned confiscatory rates and not the question of reasonable rates; but is not the question whether a rate is reasonable or confiscatory a question of the amount of return rather than a question of the methods of determining what that return is? Ought not the methods followed in the Minnesota case to be followed also in the analyses when you are trying to find out whether the rate is an adequate one? Take the Illinois State passenger fare. The State has found two cents per mile to be adequate. The Interstate Commerce Commission holds 2.4 cents adequate and reasonable, and orders the state passenger fare to be advanced. In the interstate case, wherein the question was decided, not one member of the Interstate Commerce Commission heard one word of the evidence, and the report of the examiner, who presided, was a secret report to the Interstate Commerce Commission to which no party had the right or the privilege of filing exceptions. The case was not of a minor character. It involved \$16,000,000 annually. The Interstate Commerce Commission may be entirely correct in their conclusions in all of the cases.



Before I leave that subject I want to say that I have received the most splendid treatment at the hands of the Interstate Commerce Commission on all occasions. They have never shown discourtesy to any state that I know of. I believe they are an honorable, competent group of men. I believe perhaps they are a little further removed from the people, because of their geographical location, than are the members of the state commissions. It was thought by the members of the state commissions that if the New York Central Railroad was making eleven per cent on its common stock above all operating expenses and all taxes, its revenues were adequate. Others may think differently. It was thought by members of state commissions that if the carriers on an average earn over seven and one-half per cent on their common stock, and the ratio of common stock was analogous to the ratio found by the Commission in the 1911 advance rate case as to the Baltimore & Ohio, that that was adequate revenue. Others may think differently.

If the question comes up in the case of an issue between a state commission and the Interstate Commerce Commission, how are you going to get that issue determined? The shippers of the country desire discrimination removed, and justly so. Can you use the word "confiscatory," and say that the state rate shall stand unless it is held by a court to be confiscatory? If you do that, it leaves much play for discriminations to continue. A state commission might think a return of six per cent adequate. The Interstate Commerce Commission might think eight per cent adequate. Again, the state commission might hold 2 cents a mile to be a reasonable passenger fare, and the Interstate Commerce Commission might hold that two and one-half cents or 2.4 cents to be adequate. There is quite a margin there, of twenty or twenty-five per cent.

Now the question comes up, how are you going to determine which is right? Is it wise to leave it all to be determined by one of the interested parties to the controversy? If you do that, you immediately wipe out the power of the state. It practically eliminates the state. I am not talking unguardedly, because every well posted railroad attorney in the United States will admit that that is the inevitable outcome of that course, and that is precisely what they want to have. Now if it should not be left to the state commission to determine—and I agree that it should not—and if it should not be left to the Interstate Commerce Commission—and I think you ought to agree that it should not—who should determine it? It seems to me it should be a third party, and the Sheppard Bill contemplates that that third party shall be a court of competent jurisdiction. The question is then raised as to the constitutionality of a provision whereby a court shall determine the reasonableness of rates. There is a whole line of decisions that I might quote. Here is

one, Chicago, etc., *Railway vs. Minnesota*, 134 U. S. At page 458 the Court said:

"The question of the reasonableness of a rate of charge for transportation by a railroad company, involving as it does the element of reasonableness both as regards the company and as regards the public, is eminently a question for judicial investigation, requiring due process of law for its determination."

I am not in favor of changing the law so as to throw the whole question of reasonableness of rates back into the hands of the courts. That would be a very grave error that should never be committed. The courts, prior to the creation of commissions, did have power to pass upon the reasonableness of a rate; not to establish a rate for the future, but to pass upon the reasonableness of rates already established. Passing upon the reasonableness of rates already established is constitutionally within the power of the courts, as it has been held by the Supreme Court; but since the amendments of 1906 and 1910, there have been modifications of the former opinions as to the power of the Commission under the law—not under the Constitution, but under the statute. I am only in favor of the court deciding the matter at issue when it involves a conflict between state and interstate rates. Gentlemen, it is up to us or some other people to devise a practical suggestion whereby discriminations can be removed, and this is the suggestion that we framed two years ago after very extended discussion on the floor of this Convention, and it was subsequently embraced in a bill in the Senate. The Supreme Court has no jurisdiction to pass upon errors committed by the Commission, unless the error is a constitutional one. I think that is wrong. The late Mr. Justice Lamar, in 222 U. S., page 547, states:

"There has been no attempt to make an exhaustive statement of the principle involved, but in cases thus far decided, it has been settled that the orders of the Commission are final unless (1) beyond the power which it could constitutionally exercise; or (2) beyond its constitutional power; or (3) based upon a mistake of law. But questions of fact may be involved in the determination of questions of law, so that an order, regular on its face, may be set aside if it appears that (4) the rate is so low as to be confiscatory and in violation of the constitutional prohibition against taking property without due process of law; or (5) if the Commission acted so arbitrarily and unjustly as to fix rates contrary to evidence, or without evidence to support it; or (6) if the authority therein involved has been exercised in such an unreasonable manner as to cause it to be within the elementary rule that the substance, and not the shadow, determines the validity of the exercise of the power."

The last two divisions are supplemental to the first three.

I wish that the members could see fit to give this provision that we have suggested the same endorsement that they did two years ago.

The PRESIDENT. Is there any further discussion?

Mr. THOMPSON, of Illinois. Mr. President, without intending at all to enter upon a discussion of this question, it looks to me as though it is fairly simply presented by this statement:

When a conflict arises between the authority of the state commission to fix a rate and the authority of the Interstate Commerce Commission to fix a rate, both rates as a matter of course cannot stand. One or the other must give away. The question is, which rate? It seems reasonable that there must be some power lodged somewhere that can speak, as to which of the two is the rate that should be established and be in operation. That as I understand is what this resolution refers to, pointing to an authority to speak as between the two conflicting views of two administrative bodies. No other body that I know of has been suggested that will so readily, fully and completely determine the question, as a court, and that is what the intention of this resolution is, that there be some body, some power having that authority to speak. Without that we have this dual situation, two kinds of orders directed toward the carrier, which it must observe, under the law of the state or under the law of the Federal Government. Which is the one? Therefore I am in favor of this resolution, because it points a way by which that matter can be cleared up.

Mr. JACKSON, of Wisconsin. Any remarks I shall make will be very brief. I am opposed to taking away the jurisdiction of the state commissions on the state rates. The question here is not whether that general jurisdiction shall be taken away at this time, but whether the doctrine of the Shreveport case shall be limited by specific action of Congress. Now if I am wrong in my understanding, I want to be set right, and I will thank Mr. Thorne if he will correct me. As I understand it, the law heretofore has been that the order of the Commission, either Interstate or State, shall be set aside only when confiscatory, and it has been recognized that there is a broad field in which people may disagree as to what is a reasonable rate, even if it is not confiscatory; and that the position set forth in this resolution is not that some court not specifically named shall exercise its former jurisdiction of setting aside an order because it is confiscatory, but that the court shall itself determine the question of the reasonableness of a rate which is admittedly non-confiscatory. And it strikes me that the very reason why the State Commissions and the Interstate Commerce Commission were instituted was because of the intricate facts involved in the question of reasonableness, rather than on the question of whether a rate is confiscatory. If we now propose to put upon some court, whether state or federal, a new jurisdiction, and ask that court to act as a commission on the question of reasonableness, instead of on the question of confiscation, are we not to some extent admitting that either the Interstate Commerce Commission or the State Commissions, or both, have proved inadequate to the task of determining reasonableness?

I think the resolution is very far-reaching. I do not know that I am opposed to it, but that question suggests itself to me. There is one thing I wanted to ask Mr. Thorne, that I want information about, and he can undoubtedly give me the information I want. As I understand, Mr. Thorne appeared for the state of Iowa, and for the city of Council Bluffs, and those other cities, in the Nebraska rate case. Is that true?

Mr. THORNE, of Iowa. Yes.

Mr. JACKSON, of Wisconsin. Did you ask the Interstate Commerce Commission to apply the Shreveport doctrine?

Mr. THORNE, of Iowa. I asked that the discrimination be removed.

Mr. JACKSON, of Wisconsin. Did you think you were right then?

Mr. THORNE, of Iowa. Do you desire me to go into that case?

Mr. JACKSON, of Wisconsin. I cannot quite see how your position in that case was quite consistent with the position you are taking now. I may be mistaken.

The PRESIDENT. Would it not be better procedure if the questions were put through the Chair, instead of in the form of talk between the Commissioners? The Chair will state that he will be very glad to ask Commissioner Thorne if he will answer any such question?

Mr. JACKSON, of Wisconsin. I do not doubt that there is some explanation of it, but I have often wondered about it, since I read the report, whether Commissioner Thorne was taking that position on behalf of the Iowa cities.

Mr. THORNE, of Iowa. I am perfectly willing to plead guilty. I have to reckon with laws as they are, and not as they ought to be. I am trying here to get the laws as they ought to be. (Applause.)

The PRESIDENT. Gentlemen, is there further discussion, or are you ready for the question?

Several Members. Question!

The PRESIDENT. You have heard the resolution. All in favor of the adoption of the resolution which has been presented by the Committee on Federal and State Legislation will signify the same by saying aye, those opposed no.

The resolution was unanimously agreed to.

Mr. FINN, of Kentucky. I move that we take a recess until 2:30 o'clock.

The motion was agreed to.

Whereupon, at 1:10 p. m., a recess was taken until 2:30 p. m.

## AFTERNOON SESSION.

### FEDERAL AND STATE LEGISLATION.

The PRESIDENT. The Committee on Federal and State Legislation is handing out to us, for our examination, one at a time, a certain number of resolutions. We have adopted the first resolution. We are now ready to hear the second.

Mr. FUNK, of Illinois. Mr. President, I think we would have a better idea of the scope of the resolutions if they were all read at one time, and then we could take them up in detail later. I simply offer that as a suggestion.

The PRESIDENT. What is the pleasure of the Convention with reference to that matter?

Mr. FINN, of Kentucky. The pleasure of the Committee is to adopt the plan suggested by the gentleman who has just spoken. I do not know anything about card playing, and never gambled in my life, but some of these ultra-southerners and real westerners and northerners and eastern people—I live in the central portion of the country—have said that we were playing a game of stud poker, and just exposing one card. Now I do not know the significance of that.

Mr. CARR, of New York. We thought you had three cards down.

Mr. FINN, of Kentucky. I thought you had four down.

Mr. CARR, of New York. That shows that you were playing poker.

Mr. FINN, of Kentucky. At the risk of being a little tedious I desire to call the attention of this Association to one dominating characteristic of those who represent the common carriers. That is their prophetic vision of a doleful future. They could prophesy that the European War was going to send to this country untold billions of securities which had been purchased abroad, thereby destroying the market. Well, the European War came on. Those conditions did not prevail. Then they came forward with lucid and learned statements, explaining why that condition did not exist.

As illustrative of their characteristics I want to tell you a story that occurred between me and an Irish friend of mine named Moses Jacobvitch. He said, "Attorney, you lay great stress on the prophets, and think that by some supernatural vision they can chust know vot is going to happen before it is. I do not want to take from the prophets any glory vich they should have, but I chust want to tell you who the prophets vere. The prophets vere chust great historians, and they knew everything vot had happened, and ven everything vot is, is, they knew that it had been that vay sometime before, and they could chust tell vot vas going to be the next step, so far as the future vas concerned. Vell, chust suppose it didn't happen. Then, they vere chust so filled vit knowledge that they could mystify the general public vit the explanation of vy it didn't happen, and maintain the same standing for learning as if

it had happened chust like they said it vould. You take the veather prophet. Vot does he say? He says, 'Vell, it is chust going to rain tomorrow; and tomorrow comes and it is clear, and vot does he say? 'By chiminy, the vind changed!'" (Laughter.)

I am going to expose the other four cards, gentlemen. Here are the other resolutions:

2. That in all cases arising before the Interstate Commerce Commission a state, through its Department of Justice or Railroad or Public Service Commission, or any interested shipper who is a party to the proceeding, should have the same right to secure a court review of the orders of the Interstate Commerce Commission in cases involving negative orders made by the said Commission, as is now allowed in cases involving affirmative orders.

That the act to regulate commerce should be so amended as to give the Interstate Commerce Commission the power to compel proper publicity as to the issuance of all securities made by interstate common carriers.

We believe the time of the Interstate Commerce Commission, and the time consumed in the disposing of cases would be conserved by the creation of subordinate original commissions, each one composed of three men, appointed for fixed periods and receiving salaries similar to those received by the members of our federal courts, with or without a member of the Interstate Commerce Commission sitting as a member of the said tribunal, the right being reserved to interested parties of securing a review by the Interstate Commerce Commission under conditions analogous to those now prevailing in regard to appeals from the lower federal courts to the Supreme Court of the United States.

There should be created a separate bureau for the purpose of prosecuting cases before the Interstate Commerce Commission, or the Attorney General should assign to one of his assistants the specific task of appearing before the said Commission on behalf of the public generally in cases involving alleged violations of the Act to Regulate Commerce, as the Attorney General and his other assistants appear before the Supreme Court of the United States at the present time. The aforesaid assistant attorney general should exercise the functions of a commerce counsel for the United States; he should have a fixed salary and a definite term of office, devoting his entire time to this work; and he should be given adequate facilities for the efficient performance of his said duties. This we believe to be of paramount importance, as it will give efficient representation to the interests of the public generally in cases involving matters of large importance.

This provision does not contemplate any limitation whatsoever upon other parties appearing on behalf of the public, nor upon the Commission's employment of its own counsel to appear in such cases as it may direct.

Further, we respectfully petition the Interstate Commerce Commission to make the following modifications of its Rules of Practice:

(a) That until such time as the entire Commission, or such subordinate commissions as may hereafter be created, shall sit and hear the entire evidence in all cases before said commission or commissions, in which a state may be a party, the commission, prior to the entering of a final order, should prepare and publish a tentative order, a copy of which should be served on all parties to the proceedings, and opportunity given to all parties affected by such proposed order upon reasonable notice to appear and show cause why such tentative order should not be made final.

(b) That the Interstate Commerce Commission should render no decisions in any case in which at least one member of the Commission shall not have heard the entire evidence, except where a referee or examiner may be appointed to take the testimony, in which case the said referee or examiner should reduce to printed form his findings of fact in their entirety, and the same should be served upon all interested parties, allowing adequate time for exceptions to be filed before the case is submitted to the Commission.

Now, gentlemen, those are the other cards.

Mr. BRISTOW, of Kansas. Let me inquire of the Chairman of the Committee if it is his purpose now to present each one of these resolutions separately to be acted upon?

Mr. FINN, of Kentucky. I present them as a whole, and now it is up to this Association to make a motion to separate the resolutions and discuss them separately, or to adopt them as a whole. They are here for adoption, amendment, or rejection.

Mr. BRISTOW, of Kansas. I move that the Convention consider the resolutions separately, one at a time.

Mr. THORNE, of Iowa. I second the motion.

The motion was agreed to.

Mr. BRISTOW, of Kansas. Will you be so good, Commissioner Finn, as to indicate which resolution you desire to have considered first?

Mr. FINN, of Kentucky. We may just as well take them up in their order. Gentlemen, I suppose you are quite familiar with the resolution I have just read, and in order that it may be a subject of discussion, I move its adoption.

Mr. CARR, of New York. Mr. President, the resolutions that have been presented here are a concise resume, apparently, of a tremendous amount of work that has been done by this Committee. I for one must confess that I am unable to grasp all that is embodied in these resolutions. Whether it is through lack of intellect or lack of knowledge of the propositions involved, or what it is, I will not undertake to say. But from the words that were read here, I am impressed that there was so much involved in these resolutions, that it is difficult if not impossible for any man in this hall at this time to determine intelligently in his own mind whether or not he is in favor of these resolutions. The members of the committee had all of the data and all of the other things before them, enabling them to prepare these resolutions for submission to this Association. I say that because I do not believe that I should be asked to vote on a proposition that I cannot comprehend, and I believe you would succeed far better in getting real determination from the state commissions if those commissions had an opportunity to study the resolutions that are presented, with a report of the committee as a foundation for the resolutions, rather than, in the words of the Chairman of the Committee, to expose the cards in this way.

Mr. THORNE, of Iowa. Mr. President, I fully anticipated such a suggestion as that coming from Commissioner Carr. I believe, however, a little thought on your part will make you realize the wisdom of considering the particular recommendations made. Reading them all at once does have the effect that Commissioner Carr stated. The reason why a few suggestions were compiled by the Committee is simply this: President Wilson in a message to Congress stated:

"In the meantime may I make this suggestion? The transportation problem is an exceedingly serious and pressing one in this country. There has from time to time of late been reason to fear that our railroads would not much longer be able to cope with it successfully, as at present equipped and coordinated. I suggest that it would be wise to provide for a commission of inquiry to ascertain by a thorough canvass of the whole question whether our laws as at present framed and administered are as serviceable as they might be in the solution of the problem. It is obviously a problem that lies at the very foundation of our efficiency as a people. Such an inquiry ought to draw out every circumstance and opinion worth considering, and we need to know all sides of the matter if we mean to do anything in the field of Federal legislation.

"No one, I am sure, would wish to take any backward step. The regulation of the railways of the country by Federal commission has had admirable results, and has fully justified the hopes and expectations of those by whom the policy of regulation was originally proposed. The question is not what should we undo? It is whether there is anything else we can do that would supply us with effective means, in the very process of regulation, for bettering the conditions under which the railroads are operated and for making them more useful servants of the country as a whole. It seems to me that it might be the part of wisdom, therefore, before further legislation in this field is attempted, to look at the whole problem of co-ordination and efficiency in the full light of a fresh assessment of circumstances and opinion as a guide to dealing with the several parts of it."

Following that extract from President Wilson's message the so-called Newlands Committee have outlined ten different subjects to be considered, with a large number of sub-heads, and in accordance with the request sent out by that Committee various organizations in the country have been making suggestions of a concrete, constructive character. A Philadelphia commercial organization, of which I cannot give the technical name, has drafted a set of different propositions. The National Industrial Traffic League I understand has done so or will do so. If we go before the Committee and before the country with simply one negative proposition, that we do not want this change which they are proposing as to federal and state conflicts, if we simply have one proposition to make, it seems to me that we are occupying the position of certain distinguished candidates for office in the past history of this country who have made their campaign upon a negative issue and not a constructive program. Of all organizations in the United States it seems to me that the National Association of Railway Commissioners, with their practical experience and contact with these questions, ought to be able to suggest at least a few propositions upon which we can agree. Other propositions we can omit.

I thought at first perhaps it would be better to relegate this to the Committee to draft, but it occurs to me that the Committee to be appointed for the coming year might draft something and purport to represent the National Association, when this commissioner and that commissioner would come out loudly in the papers declaring that the Committee proposition did not



represent the prevailing sentiment among state commissioners. Therefore we thought it wise to suggest a few definite, constructive propositions for your consideration, and we want to take them up one at a time rather than as a whole.

I can state very briefly to you the purpose of the second resolution, and I believe that with these railroad lawyers and railroad commissioners present, if I am in error in any particular I will be very quickly corrected, and if I am not in error the resolution is deserving of your affirmative vote.

You are perhaps familiar with what is called the Proctor & Gamble decision by the Supreme Court of the United States, wherein the Court held that decisions of the Interstate Commerce Commission were subject to review under certain conditions, when they involved affirmative orders, but not when they involved negative orders, that the policy of Congress had been changed by the amendments of 1906.

The inevitable effect of that ruling of the Supreme Court is that in the great bulk of the cases granting affirmative orders the carrier can secure review—I do not say a reversal. When relief is granted to the shipper or to a state, the carrier can get it reviewed in court; but when it is a negative order the shipper or the state that loses cannot get a review in court for mistakes of law or for any other reasons that the courts have held subject to review.

All this resolution contemplates is that the decisions may be reviewed when they involve negative orders, in the same way as when they involve affirmative orders. It does not add anything else. It is a proposition that has been discussed in the past. It was suggested at our last National Convention in the annual address. It is a matter that since then has been the subject of a number of editorials in the *Traffic World*, and has been endorsed I believe by the National Traffic League.

The PRESIDENT. Is there further discussion?

Mr. CLARKE, of Nebraska. Mr. President, in connection with this resolution it would seem to me that, particularly in view of the possibility of Congress retaining the third section in its present form, or possibly enlarging on it, and in view of the relation between the state commissions and the Federal Commission, so long as the condition prevails where an order of the Commission becomes final, and there is a belief on the part of the state commission that the Federal Commission has erred either in matters of law or in matters of procedure, it would be far better, not only for the state but for the Federal Commission, that this power of review be granted, in order that we may thresh the matter out before a competent tribunal, and determine the issues and our differences of opinion. If the state loses, its attitude toward the Federal Commission will be far more friendly, and far more satisfactory than under the present

conditions. From my viewpoint it seems to me it would be very desirable legislation.

The PRESIDENT. Is there further discussion, gentlemen?

Mr. DUNN, of Florida. Speaking for myself, I want to say that I am in favor of the proposition. In my opinion there are many state cases which the railroads now appeal to the Interstate Commerce Commission, when if they knew that the states had a final appeal, they would do what the people asked for, or what the commissions asked for, without a fight before the Interstate Commerce Commission. That is one of the reasons why I favor this proposition.

Mr. RICHARDS, of South Carolina. Mr. President, some of us were not present when the resolutions were read, and we would like to know what proposition is pending?

The PRESIDENT. The Secretary will read the pending resolution.

The SECRETARY read as follows:

"2. That in all cases arising before the Interstate Commerce Commission a state, through its department of justice or railroad or public service commission, or any interested shipper who is a party to the proceeding, should have the same right to secure a court review of the orders of the Interstate Commerce Commission in cases involving negative orders made by the said Commission, as is now allowed in cases involving affirmative orders."

Mr. CARR, of New York. May I ask what is meant in that resolution by "negative orders?"

Mr. FINN, of Kentucky. Orders denying relief.

Mr. CARR, of New York. If a rate is attacked as being unreasonable, and the Interstate Commerce Commission determines, after investigation, that the rate is not unreasonable, then notwithstanding that determination an appeal may still be taken to the courts. It is a negative order in the sense that the relief prayed for is denied. In other words, it is an order adverse to the complainant's contention.

Mr. THORNE, of Iowa. You are correct, but you will notice that it is limited to the same power of review that is involved when it is an affirmative order, which is confined to the question of a fundamental mistake of law, or the adoption of a clearly erroneous method, or an entire lack of evidence in support of it.

Mr. FINN, of Kentucky. For instance, suppose the Interstate Commerce Commission should say that under the authority vested in it by Congress, it had no power to determine the question, when as a matter of fact the shipper believes that authority has been vested in the Interstate Commerce Commission by the act itself. Then this law, if enacted by Congress, will privilege the shipper to have the question of the authority of the Interstate Commerce Commission determined, and compel the Commission to decide the question if the court sustains the shipper. The shipper can get a determination of that question. The ques-

tion has been up before the Commission and the courts, where the shipper really thought that the Interstate Commerce Commission did have the right to determine the question at issue, and the authority was refused.

Mr. CARR, of New York. Then it seems to me that the resolution as presented here, if boiled down and stated in fewer words, is to this effect, that all decisions of the Interstate Commerce Commission shall be subject to review on questions of law. If you state it that way, then you will have covered it.

Mr. THORNE, of Iowa. Mr. President, there would be objection to that, because the Supreme Court, in the case that I read to you this morning, said there are certain cases where questions of fact are involved with the questions of law. The court holds that in certain cases the Commission may go outside of the record and base its conclusions on facts not established in the case, and that is reviewable. The reason why it was stated as phrased in the resolution, "negative" and "affirmative" orders, is because that is the precise language of the Supreme Court in the Proctor and Gamble case, where they say the courts have not the power of review in cases involving negative orders. It would be improper to say, "The same right of review in cases where the shipper is complainant as where the railroad is complainant." That language was adopted by one gentleman, but later the majority of the Committee thought it was not an accurate statement, because to-day the shipper has the same right to carry it into court as the railroad has, in regard to an affirmative order. The reason that makes it important to the shipper is because nine-tenths of the cases where the shipper would want to get a review are negative orders, and then he cannot get that review, whereas nine-tenths of the cases where the carrier wants the review are affirmative orders, and the carrier has that right.

The PRESIDENT. Is there anything to be said on the other side of this issue? I believe all members of this Association want to hear both sides of the question before they cast their votes. I know that is always my desire. Now is there anything on the other side of this, and if so what is it?

Mr. CARR, of New York. I should like to say one word more, which may possibly get some information before the Convention. In the investigation which has been made by this Committee, many cases have come to the attention of the Committee where hardship has been occasioned by the failure of the party against whom the negative order applies, to obtain relief, because he has been unable to get the redress which he thinks he is entitled to. How much more litigation is going to be thrown upon the courts in case this relief is given? We are all complaining now because so much litigation exists in the country, and every

effort is being made to cut it down so far as it possibly can be cut down.

Mr. BRISTOW, of Kansas. Mr. President, let me inquire of Commissioner Thorne, if this resolution should pass, and Congress should by law provide the remedy asked for, would such legislation open an opportunity for the state commissions to take into court the Western Passenger Rate Case? That was not a negative order, was it?

Mr. THORNE, of Iowa. The opinions of cooks and lawyers differ. The position taken by certain attorneys connected with that case was that the way the law read we did not have the right of review. Having been so intimately connected with that case myself, I would not like to express an opinion. If I did, it would be rather long drawn out. All I can say in answer to both your questions is that if there is any man in this room who has ever represented a shipper, who has been defeated by the Interstate Commerce Commission, and felt that he was wrongly defeated, he knows that this resolution would have given him a review, the same as the carriers get their review to-day when the shipper does not grant relief. Then under those circumstances I think a review ought to be given to the complainant.

The PRESIDENT. May I ask, as a matter of information, Mr. Commissioner Finn, as to whether in your judgment the need for this resolution is confined to cases in which the sole question is whether the Interstate Commerce Commission has or has not jurisdiction over the issue?

Mr. FINN, of Kentucky. I do not see how it could embrace the asking of an order of a court to require them to do anything other than to exercise jurisdiction, because I do not concede that it is the function of a court to enter a judgment prescribing a future action or a future course. The only thing that a court can do, it seems to me, is to determine what has been decided already by an administrative board, just in the same capacity that the Supreme Court determines the significance of the report of the Master in Chancery. That is my idea about it.

Mr. THORNE, of Iowa. I do not desire to discuss the question in regard to the Western Advance Rate Case. I differed with certain attorneys as to the power to get that case reviewed. Did I understand Mr. Finn to say the carriers do have the right to secure a review in court, of orders by the Commission, when they are negative in their character? I say that there is no question but what they do have that power, and I will quote a decision which nobody can question.

"The Government further insists that the Commission is an administrative body, and even where it acts in a quasi-judicial capacity it is not limited by the strict rules as to the admissibility of evidence which prevail in suits between private parties."

I am reading from the decision of the Supreme Court of the United States in a case entitled, "Interstate Commerce Commission vs. Louisville & Nashville Railroad Company, 227 U. S., page 88. I am reading now from page 93:

"But the more liberal the practice in admitting testimony, the more imperative the obligation to preserve the essential rules of evidence by which rights are asserted. In such cases the Commissioners cannot act upon their own information, as jurors could in primitive days. All parties must be fully apprised of the evidence admitted or to be considered, and must be fully opportunity to cross-examine witnesses, to inspect documents and to offer evidence in explanation or rebuttal. In no other way can a party maintain its right or make its defense. In no other way can it test the sufficiency of the facts to support the findings; for otherwise, even though it appeared that the order was without evidence, the manifest deficiency could always be explained on the theory that the Commission had before it extraneous, unknown but presumptively sufficient evidence to support the findings."

Now I cite the decision of the Supreme Court of the United States in the case of Interstate Commerce Commission vs. Union Pacific Railroad, the case from which I read this morning, reported in 222 U. S., reading from page 547. Notice the additional things, besides the question of confiscatoriness and the question of jurisdiction.

"There has been no attempt to make an exhaustive statement of the principle involved, but in cases thus far decided it has been settled that the orders of the Commission are final unless (1) beyond the power which it could constitutionally exercise—"

That is the proposition that you referred to—

"or (2) beyond its statutory power; or (3) based upon a mistake of law. But questions of fact may be involved in the determination of questions of law, so that an order, regular on its face, may be set aside if it appears that (4) the rate was so low as to be confiscatory and in violation of the constitutional prohibition against taking property without due process of law; or (5) if the Commission acted so arbitrarily and unjustly as to fix rates contrary to evidence, or without evidence to support it; or (6) if the authority therein involved has been exercised in such an unreasonable manner as to cause it to be within the elementary rule that the substance, and not the shadow, determines the validity of the exercise of the power."

Now, Mr. President, it simmers itself down to this: Whether you like that rule or not, it does exist to-day when affirmative orders are made. We are only asking that it shall also exist when negative orders are made. The modification to which I refer will not be found in the cases which I read from, but in the later decisions, in the Proctor and Gamble case. Now if I may have that resolution for a moment, we have not attempted to go one step further than to secure that analogy—

"That in all cases arising before the Interstate Commerce Commission a state, through its department of justice or railroad or public service com-

mission, or any interested shipper who is a party to the proceeding, should have the same right to secure a court review of the orders of the Interstate Commerce Commission in cases involving negative orders made by the said Commission, as is now allowed in cases involving affirmative orders."

Now if I have misinterpreted in my own mind the power of any party to secure a review on affirmative orders, it does not affect the purpose of the resolution one iota, because this resolution would not carry the review as to such matters. It only carries a review where the railroad or other party already has the right of review.

Mr. DUNN, of Florida. I do not know whether I am right or not, but if I understand this proposition, I think I have in mind a case that may be in point. We grow a good many strawberries in the state of Florida. In the state of Louisiana they also grow a good many strawberries. Our strawberries are handled entirely in Armour refrigerator cars on freight trains. In the state of Louisiana they handle strawberries in express refrigerator cars on passenger trains. Louisiana is further from the market than is the state of Florida. Our strawberries are not getting to market in as good shape as the strawberries from the state of Louisiana. Suppose we should bring a case before the Interstate Commerce Commission and ask that body to require the railroads out of Florida to do for the public in Florida what the railroads in Louisiana are doing voluntarily for the people of that state. Then the question of jurisdiction might arise, as to whether or not the Interstate Commerce Commission has authority under the present law to require the furnishing of express refrigerator equipment. Now suppose we carry the case before the Interstate Commerce Commission, and the Interstate Commerce Commission decides that they have the jurisdiction, and the case goes on. The railroads immediately appeal to the court, and assert that the Interstate Commerce Commission has not jurisdiction, and they go up and have that matter adjudicated. Suppose, on the other hand, that the Interstate Commerce Commission should decide that they had not the jurisdiction. Then under the present law, as I understand it, the state of Florida must stop. If I understand this proposition correctly, if this law is amended, and the Interstate Commerce Commission should decide that they had not the jurisdiction, then the state of Florida could appeal to the courts and get their side of it adjudicated. I say it is unfair, as the law is at present, that the common carriers of this country have the right of appeal, and the people have not the right of appeal. That is the way I look at the proposition, and that is the reason why I favor the proposition as presented here.

Then there is another question, and I hope that I speak not indelicately. We are all human after all. The members of the

Supreme Court of the United States are human, the members of the Interstate Commerce Commission and the members of the various railroad commissions of the several states are human; and it is somewhat natural that when cases come before us, we dislike to have our decisions reversed by the courts. There are none of us who like to have our decisions reversed. So, as we are human, might it not be possible that where a state commission or the Interstate Commerce Commission know that if they decide a case thus and so it may be reversed, whereas if they decide it the other way there is no chance of appeal and no chance to be reversed, they might decide it, if it is a doubtful proposition, in a way that would leave no appeal and no opportunity for reversal, or might they not lean a little bit the wrong way? Is it not fair to give the people an equal chance with the common carriers of this country?

The PRESIDENT. If there is no further discussion, we are ready for the question. The question is on the motion to adopt the second resolution.

The motion was unanimously agreed to.

The PRESIDENT. Now, Mr. Finn, will you favor us with the third resolution

Mr. FINN, of Kentucky. The next resolution is:

"That the act to regulate commerce should be so amended as to give the Interstate Commerce Commission the power to compel proper publicity as to the issuance of all securities made by the interstate common carriers."

The PRESIDENT. Mr. Commissioner Finn, may I ask a question, simply for information, so that possibly the members may have a clearer conception of just what this resolution means?

As I understand it, there are two general theories in connection with the regulation of public utility securities. One theory contemplates actual regulation by the governing authorities. The other theory contemplates publicity only. In other words, to make myself clear, this Convention has two or three times expressed itself in favor of regulation, as distinguished from publicity, of the securities of interstate carriers. I am simply asking as to whether this resolution now contemplates that we shall reverse what we have heretofore done, and favor publicity as distinguished from regulation?

Mr. FINN, of Kentucky. I do not know that I express the views of all the members of the Committee relative to this resolution, but I shall give you my personal views concerning it. Where a public utility commission has the authority to grant to a public service corporation the power to issue securities, it occupies and presents to the public two positions that are incompatible. One is that, by a judgment of the Commission it says those securities are issued for value, so far as the public is concerned,

and on top of that proposition it says that the state or the government will not guarantee a return upon the securities which the commission has approved.

I confess that personally I have had a reversal of sentiment upon this particular proposition; and until the government or the state can actually guarantee a return upon the securities which it authorizes to be issued, then the administrative board which authorizes the issue creates a false impression upon the public by authorizing the issue and then failing to guarantee a return upon the securities issued. There is a two-edged sword in connection with the government function of authorizing the issuance of securities. One is that edge of the sword which cuts down the privilege of the unscrupulous financier to sell watered stocks to the public. The other edge is, when a public utility commission authorizes this issue, that some court in the future might take this governmental function as a basis for rate-making, and say that the securities issued were issued by governmental authority, and therefore the rate-making body should recognize that there is a value connected with the security that has been issued.

Now when a public utility commission does not and cannot guarantee a return upon the investment, when you resolve it to its last analysis, the only benefit that it is to the public is to guarantee publicity. Now if you guarantee this publicity without taking the risk that some court in the future may say that the governmental action of necessity carried with it value, then you have protected the public, and at the same time prevented the possibility of some court in the future saying that this issue authorized by the state or the government should represent actual value.

Mr. HALL, of Nebraska. What do you mean by "guaranteeing publicity?"

Mr. FINN, of Kentucky. I mean by that, and the significance of this resolution is, that no interstate carrier shall issue securities at all, until and unless it has first made an application to the Interstate Commerce Commission to issue the security; and then the Interstate Commerce Commission will have the full authority to require from the carrier every conceivable detail in connection with the issue of that security.

Now while the Committee did not go into details, and I really do not know whether the other members of the Committee have the same thing in mind that I have in mind, the complete and full protection of the public would necessitate that when the carrier offered these securities to the public for sale, it should at the same time present to the purchasing public the findings of facts by the Interstate Commerce Commission.

Mr. HALL, of Nebraska. The Interstate Commerce Commission, or the state commission, if they guarantee to the public full



publicity, would ascertain the amount of proceeds that was being invested, would they not?

Mr. FINN, of Kentucky. I would think this publicity necessarily would involve the ascertainment of all the facts that it would be possible for the Interstate Commerce Commission to obtain.

Mr. HALL, of Nebraska. And inform the public as to the amount of money that was being invested, would they not?

Mr. FINN, of Kentucky. To be sure.

Mr. HALL, of Nebraska. And then also inform the public as to the amount of securities issued.

Mr. FINN, of Kentucky. Why, to be sure.

Mr. HALL, of Nebraska. Suppose the Commission finds that \$100,000 is being invested in a certain enterprise, and the Commission so inform the public, but at the same time they tell the public that there are \$200,000 of securities being issued?

Mr. FINN, of Kentucky. Then under those circumstances I do not think that the public would look favorably upon the purchase of such securities. Now if as a matter of fact, after an investigation and findings of fact by the Interstate Commerce Commission, it was only necessary for the public service corporation to issue say \$1,000,000 of securities, and it had gone ahead and determined to issue \$2,000,000 of securities, I do not believe that it could sell them.

Mr. HALL, of Nebraska. They have been selling them.

Mr. FINN, of Kentucky. To be sure they have been.

Mr. HALL, of Nebraska. All over the United States.

Mr. FINN, of Kentucky. That is true, but there has been no governmental determination of the actual facts relative to the securities that have been issued. Why, recent history shows that in the reorganization of many common carriers, they have increased their securities millions of dollars without adding one dollar to the actual value of the property.

Mr. FOLEY, of Kansas. May I ask you, Mr. Finn, if it is your judgment that purchasers of securities rely to any extent upon the certificates issued by commissions in relation to the securities, or do they not rely upon the reports made to them by engineers and others, who undertake separate and independent investigation before purchasing bonds or other securities?

Mr. FINN, of Kentucky. I think possibly your statement generally is correct; but it is due to the fact that governmental investigation relative to the issue of the securities has not been made to the extent that it should be made, and does not have the same weight upon the public that it should have; and I want to impress another proposition, that the issue of securities is, so far as the public is concerned, a secondary consideration. The group that I read to you about this morning, determines in the first place whether a common carrier of any consequence shall increase its indebtedness. The group does that. Now after the

group determines that the indebtedness of a common carrier of any consequence shall be increased, then they purchase the securities in bulk, and after they have purchased them, then they retail them to the general public. Now that is the actual condition that exists.

Mr. EDGERTON, of California. Your process it seems to me is this: An application is made to the Interstate Commerce Commission by an interstate carrier, for the issue we will say of \$100,000,000 of bonds. The Interstate Commerce Commission then investigates, publicly I assume, but in any case it investigates, and makes certain findings. Now let us assume that it finds that that issue of bonds is too great, for whatever reason. Your point is then that the railroad could not sell those bonds because of that finding?

Mr. FINN, of Kentucky. I think so.

Mr. EDGERTON, of California. Let us assume that it cannot sell them. What then is the railroad to do?

Mr. FINN, of Kentucky. Let us go ahead and take your governmental control proposition?

Mr. EDGERTON, of California. I was trying to proceed on your theory.

Mr. FINN, of Kentucky. I understand, but there are just two theories. One is that they have absolutely the power to prohibit the issuance of securities. Now suppose the same findings of fact exist, and the Interstate Commerce Commission say, "We refuse to grant you authority to sell them." Then what is the common carrier going to do?

Mr. EDGERTON, of California. Make another application, cutting down its proposal.

Mr. FINN, of Kentucky. Now why, under the same state of facts, can it not cut down its proposal and come back to the Interstate Commerce Commission with another proposition? And will the findings of fact on the second proposition be different from the findings of fact on the first proposition? What I want to do, if I personally can, is to prevent any governmental authorization of the issue of securities, when as a matter of fact the government does not guarantee any return. The whole object in the first instance, it seems to me, resolved into the last analysis, is publicity. The only effect that it has, upon the bond seller and upon the public, is the publicity incident to the application for this sale of securities. Now if you have this publicity, all the beneficial results are obtained, and at the same time, you avoid the possibility in the future of considering the securities as a basis for rate-making.

Mr. CARR, of New York. Mr. President, it strikes me that we are going far afield from the purpose for which this Association was formed. In the first place, when securities are authorized and issued, no state commission tells the public that there is value

there. The courts have repeatedly told the people that that is not a guarantee that these securities are a good investment. They have told the people that they must still look into the matter themselves, without regard to what the determination of the Commission may be. What the Commission is to do is to say that upon a state of facts presented to them the corporation is justified in issuing a certain amount of securities, at a certain percentage of par, for specific purposes, which are set forth in the petition of the corporation; and they go further than that, and undertake to see that the proceeds of those securities are expended for the purposes for which they are offered. So that in the inception, so long as the state holds the power to pass upon the authorization of securities, you get your publicity. You get it in the first instance, and any publicity that you might get from the Interstate Commerce Commission would not sell one dollar's worth of securities.

Now regardless of what might be done by the state commissions, their authority for the issue of securities does not sell a share of stock, and it does not sell a bond, and those stocks and bonds are not sold, as a general proposition, until such time as the bankers who sell them tell their customers that they are worth investing in. Now to have the Interstate Commerce Commission endeavor to give publicity to the issue of securities of the carriers is to my mind requiring an enormous amount of useless work. Speaking from my own experience, I will say that the state commission, before it authorizes the issuance of securities, passes upon those matters to the fullest extent. The Interstate Commerce Commission could not do any more than the Commission which I represent does, when it comes to the authorization of an issue of securities. And I will guarantee that there is no investor in the whole United States who would care one iota more for what the Interstate Commerce Commission might say regarding those securities than what the Commission of the state of New York would say.

Now assuming that that is so—possibly it is not but I think it is—why go to the extent of memorializing Congress to give publicity to the issue of securities by an interstate carrier or by any common carrier? If what we mean is to give the Interstate Commerce Commission the power to regulate the issue of securities, let us say so, and let us say it right out openly. Do not go behind the bush and say, "We suggest that there be publicity for the issue of securities by an interstate carrier."

Now let me tell you what I think about it. I think that undoubtedly much good would be accomplished by giving the Interstate Commerce Commission, or some other federal body, the power to authorize the issue and sale of securities by an interstate carrier. I will cite one concrete example for illustration. Within six weeks the New York Central Railroad Company

made an application to the Commission of which I am a member, for permission to guarantee \$2,000,000 of bonds of the Toronto, Hamilton & Buffalo Railway, a connecting carrier in Canada, one-quarter of the stock of which is owned by the New York Central, one-quarter by the Michigan Central, and one-half by the Canadian Pacific Railway.

What happens? The New York Central Railroad comes to our Commission and asks for permission to guarantee those bonds. We say, "We approve it. On the facts which are presented you are justified in incurring that evidence of indebtedness." What else happens? The New York Central Railroad must go to the public utilities commission of Pennsylvania and ask them the same thing, and ask them if they approve. What next? They must then go to the state of Ohio and ask the Ohio commission if it approves. Then what? They must go on to Indiana, and ask Indiana if she approves, and then on to Illinois, and ask Illinois if she approves. Now gentlemen, I leave it to any one of you, is it not an absurdity, is it not ridiculous that a state of affairs of that sort must exist? If there was a federal body that had the power to pass upon that proposition, it would not be anything against any state commission. It would not take a single power away from the state commission that it ought to have, and that it prides itself upon having; and none of us, so far as I can ascertain, would care the snap of his fingers whether or not we had the power to pass upon the question of the guarantee of those bonds.

Now what happens when there is an issue of stock by the same kind of a carrier? It goes through exactly that same process in every state through which it operates, and goes to every state commission with the same proposition, incurring the expense incident thereto. And who pays the expense? The people, nobody else. The people pay it all the time. As a matter of fact, the people pay everything.

Now so far as this resolution is concerned, in its present form I am against it. It does not say what it intends. If we are for regulation, let us say regulation. If this is for publicity, then I say I am against publicity in that form, because it does not accomplish anything, and I do not believe in putting this authorization on record for a resolution of that sort.

(Mr. Bristow of Kansas took the Chair.)

Mr. HALL, of Nebraska: Mr. President, those of you who have read the findings and orders of the New York commissions where applications have been made to those commissions for authority to issue stocks, notes, bonds and other evidence of indebtedness certainly are convinced that the New York statute, regulating the issuance of securities, is wholesome and great good has resulted from it.

If we undertake simply to give publicity to the amount of money invested and not go any farther, we are simply laying a foundation to fool the investors in public utility securities. The investing public will be defrauded in the future just as it has been in the past. If the commissions are to make investigations as to the amount of money invested in public utility securities, it certainly is just as easy to go a step farther and limit the securities to the amount invested. I have in mind the inclusion of all necessary overhead expenses connected with the financing of the utility such as commissions on the sales of the securities, discount on bonds to make up the difference between the rate of interest that the bonds are to draw and the prevailing rate of interest that is being paid at the time of the issuance of the bonds, and all promotion expenses legitimately incurred. But when the amount of money invested, including everything, has once been ascertained, certainly no one is harmed by limiting the amount of securities to be issued to that amount. Commissioner Finn certainly knows that, when this is done it is not in a sense a guarantee on the part of the public to pay returns on the securities authorized to be issued; but after a thorough investigation and complete check as to the amount of money that has gone into the utility have been made and the plans and specifications have been approved by the commission and all detailed inventories have been checked by the engineering department and the expenditure of money by the accounting department and the engineering department has found that the utility is an economic plant and has been constructed according to the general plans and specifications that have been previously approved by the commission, then I am willing to make and will help to make rates to pay the operating expenses of that utility and a fair return upon the capitalization that I have helped authorize to be sold, and I go so far as to say that after money has been invested and a utility constructed and put into operation, rates should be made to take care of those securities that have been issued as high as the traffic will bear. By the expression "what the traffic will bear" I mean to say a rate that will produce the greatest net operating income which should not be reduced until the net operating income becomes more than is necessary to pay fair dividends upon the outstanding securities authorized to be issued.

As I understand the purpose of all statutes that have been passed which were intended to regulate the issuance of securities, there have been two things to be accomplished: First, a true basis for rate-making; and second to limit the securities to an amount upon which dividends will be paid, thereby protecting the public in its investments in public utility securities. Those who advocate some publicity scheme that would adequately protect the public should come forward with their scheme and

tell us how they expect to accomplish the desired results. Publishing large tabulations of figures in newspapers, which accurately show the amount of money that is being invested in any particular utility, the amount of money that is spent in operation, maintenance, and depreciation, might be of some benefit to the public, but those statements could not be kept running in the daily papers continually, nor would the average investor be able to understand the figures if they were thrown up in a way that would reflect the whole truth. One of the great responsibilities placed in the hands of the commissions is to do these things for the public. That is one of the purposes for which the commissions were created and it seems to me that those who advocate publicity are in a certain sense at least undertaking to shirk a responsibility that properly belongs to them.

As long as the dollar sign is allowed to be upon a certificate of stock, I believe that a strict regulation and control should be supervised by governmental authority over the issuance of securities. Conceive if you can what would happen to the public utility stock market if the dollar sign were removed and each certificate of stock showed on its face that it represented one millionth part, for instance, of the equity in a certain utility. Immediately each investor would be put upon his notice as to what that one millionth part represented. Now conceive if you can what publicity system would be necessary in order to adequately advise the public as to the value of all securities outstanding which represent public utility properties.

Mr. THELEN, of California. Mr. President, it seems good to get back again on the floor of the Convention where I can talk at people instead of simply being talked at without having a chance to say anything in return. I have therefore taken this opportunity of being relieved temporarily from the cares of office, in order that I may address myself to what I believe to be one of the most important issues that will come before this Convention.

I would like, in a preliminary way, to make a distinction between the different methods of handling the problem of the issue of securities, as these methods have been worked out at different times in different sections of the country. Then I want to read this specific resolution, and then in the light of the history of the country and in the light of what appear to be sound economics and sound governmental policy, I should like to suggest to you the way that I think this resolution ought to be handled.

Those who have given consideration to the question of the issue of securities by public utilities realize that there have been two broad schools of thought with reference to that subject. There are two fundamentally different ways in which the problem

has at different times been handled. One method is what is known as the publicity method. The other method is what is known as the regulatory method. Now what is meant by these two methods?

The publicity method presupposes that the utility which desires to issue securities shall, in some public office, such as the office of the Secretary of State, or some other public body, file information when it desires to make an issue of stock, bonds or other securities. It files the information in that office to show that it is about to issue stock amounting to so much par value, or bonds amounting to so much par value. That is the essence of the method of publicity, and it is the method which was first used in the United States; because until the regulatory method came along, the publicity method was the only one that was adopted wherever anything was done by governments with reference to the issue of securities of public utilities.

The other method is what is known as the regulatory method. That method presupposes that the utility which desires to issue stocks or bonds shall first make application to some governmental authority; that it shall file with that governmental authority all the information with reference to this particular issue, the amount which it desires, the purpose for which the proceeds are to be used, and all the other information, so that the governmental authority may be able to act intelligently and affirmatively on the question of the issue of the securities. When this information has been filed, and generally after hearing, then the regulatory body takes affirmative action, as distinguished from the negative action of the mere publicity method.

This is the practice of most of the states that have had considerable experience in the issue of securities. The regulatory body by that affirmative action gives its authority as to the amount of securities that shall be issued, as to the purpose for which the proceeds shall be used, and as to the disposition of the proceeds.

I might go on interminably with reference to the details of these two methods, but I have tried just in a nut shell to show the essential distinction between the method of publicity and the method of regulation.

There have been such abuses under the publicity method, by public utilities throughout the United States, that close students of our government, who have at heart the welfare of their country and the adequate regulation of those public utilities, by public authority, have gradually provided for the method of regulation as distinguished from the method of publicity. Take for instance the New York, New Haven & Hartford mixup. It was simple and easy for a railroad like that to file in a public office a statement that it desired to issue stocks and bonds, and then do with them what it pleased. That sort of method does

not avoid, steals, it does not give to the people the supervision which they ought to have over the issue of these securities, and so it is historical that gradually the different states of the Union which have given thought to this question of the issue of securities by public utilities have changed from the publicity method to the regulatory method. New York and Wisconsin I think were leaders in that, and gradually the other states of the Union which have provided for adequate regulation and supervision of public utilities have followed suit.

Out in California we have a law that provides for the regulation of public utility securities by the regulatory method as distinguished from the publicity method. We have only had that law for four or five years, but during that time we have had experience in the issue of securities by all classes of public utilities, and in amounts totalling, I think, over \$300,000,000.

Now in the light of that fundamental distinction between the publicity method on the one hand and the regulatory method on the other, if you will permit me I should like to read this resolution.

"That the act to regulate commerce should be so amended as to give to the Interstate Commerce Commission—"

What?

"The power to compel publicity as to the issuance of securities made by interstate common carriers."

So it is perfectly evident that if we adopt this resolution, we align ourselves on the side of the old publicity method as distinguished from the new regulatory method.

What has been the action that this Association has taken at different times with reference to this specific issue? Twice this Association has acted, and twice it has aligned itself with the regulatory method as distinguished from the mere publicity method.

In October, 1913, a report was presented to this Association by John Eshleman, at that time President of the Railroad Commission of California, a real patriot if there ever was one in public utility regulation. In that report the Committee came out in favor of adequate regulation of the issue of public utility securities as distinguished from mere publicity. That report consisted of six recommendations, and all of those except No. 4, which referred to the limitation of the amount for which the securities might be sold, were adopted by this Association.

Mr. YATES, of Illinois. Was that adequate regulation by the Interstate Commerce Commission?

Mr. THELEN, of California. This was real regulation by the Interstate Commerce Commission, yes. Then in 1915 the matter



came again before the Association at our meeting in San Francisco. At that time this resolution was adopted by the Association:

"Resolved, that it is the judgment of the National Association of Railway Commissioners that supervision and control by the states of the issue of stocks, bonds, notes and other evidences of indebtedness of common carriers by rail should be preserved, but that such regulation may be properly supplemented in the public interest by a federal statute carefully framed, to apply—"

And I would like to call your particular attention to the next words:

"To apply effective regulation along already tested lines, and that therefore the issues of stock and bonds of common carriers operating railroads constructed across state lines may properly be subject by Congress, if within its power, to effective regulation—"

Not publicity—

"by the Interstate Commerce Commission, or by special tribunal created for the purpose, as may be deemed necessary, such regulation to be made in addition to the state authority."

So it appears from the records of this Association that twice this problem has come before us, and twice we have passed upon it, and twice have aligned ourselves with the modern and effective method of regulation, as distinguished from the ineffective and useless method of publicity.

Therefore, if we now adopt this resolution, we are going back, not merely on the legislation of the progressive states of the Union, but also on the action which we ourselves have twice, after due consideration taken.

When the public utilities act came before the state of California for consideration, the corporations came to us and pleaded that we should give them mere publicity, as distinguished from real regulation. Bearing in mind all the things that had happened in the history of California through the kind of publicity that we had had in the past, as distinguished from regulation, we refused to listen to their plea, and we insisted that our public utilities act should provide for effective regulation of the issue of securities by public utilities. I predict that there is no action which this Convention could take which would be more welcomed by the carriers than would be this reversal of form on the part of our Association. They have been fighting in the states, and they are fighting before the nation now, for mere publicity, as distinguished from real regulation in the issuance of their securities. I could go on and refer to case after case, of mischief that the utilities were able to do by the

issue of securities under mere publicity, and I could refer you to the benefits that have come, not merely to the people themselves, but to the utilities, as the result of effective regulation by governmental authority; but I take it that it is unnecessary to do so. I simply wish to draw attention to the fact that as the result of this resolution we are not voting on an issue between state control and federal control. This resolution, like the action that we have already twice taken, refers to control by the Federal Government, and the issue presented by this resolution is not federal control vs. state control, but it is federal control through mere publicity as distinguished from federal control by actual effectual regulation.

Mr. President, I earnestly and sincerely hope that this Convention will not adopt this resolution. Let us not take a step backward. Let us see to it rather that we go forward, and that to the extent to which it may hereafter be necessary, the Federal Government shall have effective regulatory control, and not wishy-washy publicity control over the issue of securities by interstate carriers. (Applause.)

Mr. YATES, of Illinois. Mr. President, what I had in mind to say was almost something by way of a point of order. I had supposed that if any question did arise as between state regulation and federal regulation, it would come up probably to-morrow morning in connection with the report Mr. Edgerton made on capitalization, and I was simply going to express regret that anything should be injected this afternoon that might possibly divide us into two camps, when it is of the utmost importance that the suggestions we make in these resolutions be unanimous if possible, or at least be something that can be supported by us all; and my understanding last night was that the question of securities would not be referred to in these resolutions which were to be suggested and discussed this afternoon. One reason for that is that we will be in two camps on that proposition. If I should happen to go home, or get sick tonight, I want to say now that if there are two camps on this question of the surrender by the states of the control of the issue of stocks and bonds, if you are all in one camp, then I am the other camp, for I am in favor of the retention of such supervision as we have in the state of Illinois. However, in view of Mr. Thelen's logical and accurate statement of the situation—except that I do not agree with his proposition that this Association is irrevocably committed to federal regulation of stocks and bonds, because the last time I was here, two years ago, we did not so vote—it seems to me there is only one thing to do. I was not at the San Francisco Convention, and two years ago, when I was here, this Association did not commit itself to the federal regulation of stocks and bonds. In 1913, before I was a member of the Association, they may have said something of that kind.

I say that after Mr. Thelen's logical and accurate statement of the situation, it seems to me there is only one thing for us to do, and that is to vote "no" upon this proposition.

Mr. MILLS, of Minnesota. I should like to ask Mr. Thelen, does the California statute prescribe what facts shall exist before the issuing of stocks and bonds, or is that left entirely in the discretion of the Commission?

Mr. THELEN, of California. The statute provides that the proceeds from the issue of stocks and bonds shall be used for one of four or five purposes, including extensions, betterments, improvements, refunding, and one or two other matters; and after it provides for those general purposes for which the proceeds may be used, it then establishes the machinery by which applications must be made to the Commission, and by which the Commission is authorized either to grant the application as prayed for, to deny it, or to grant it with modifications.

Mr. EDGERTON, of California. It was a specific recommendation of the Committee on Interpolate Relations that the Interstate Commerce Commission be given the power to regulate the stocks and bonds of interstate carriers, and if that is the subject under discussion, I assume it might as well be discussed at the same time. If it is to come up later, all right. What about it?

Mr. THORNE, of Iowa. I think there is some over-lapping of the two subjects.

Mr. EDGERTON, of California. I want to make this suggestion at the beginning, that Mr. Finn has injected into this situation an attack—

The CHAIRMAN (Mr. Bristow). I think it would be better, rather than to mix up the reports of two or three Committees in one, that this resolution be disposed of, because it seems to me to be a resolution legitimately coming from the Committee on Legislation, though it embraces subjects that have been considered by other committees. Now it seems to me that the Commissioner from California (Mr. Edgerton) should direct his remarks to the resolution that is pending, with a view to action upon this resolution, rather than to what action may be taken upon a resolution that may come up to-morrow.

Mr. EDGERTON, of California. All right. By the way, am I to understand that this resolution involves all that it is proposed that the Interstate Commerce Commission shall do, to wit, provide publicity in the matter of stocks and bonds, and that it does not involve the question as to whether the states or the Interstate Commerce Commission should regulate? Is that excluded from the proposal?

Mr. FINN, of Kentucky. It does not exclude the several states from their power to regulate, or state supervision of the issue of securities.

Mr. EDGERTON, of California. In other words, it leaves the states with the power that they now have, and gives the Interstate Commerce Commission publicity?

Mr. FINN, of Kentucky. Yes.

The CHAIRMAN (Mr. Bristow). Commissioner Thorne desires to offer a substitute for the pending resolution. Would it not be well to have that substitute offered, in order that it may be before the Association for consideration?

Mr. FINN, of Kentucky. It might eliminate further discussion.

Mr. EDGERTON, of California. Surely that is desirable.

Mr. THORNE, of Iowa. Mr. President, the resolution as originally prepared by the Committee included regulation, so as to secure honesty in issue and the proper application of the proceeds of the sale, as well as publicity, so far as it did not interfere with the constitutional rights of the states. But through a process of compromise you got the resolution that was submitted to you by Mr. Finn. We are in a practical world and not an ideal world. This Association has tried year after year to get proper regulation of securities through Congress, and it has failed. It is true, New York has got something, Wisconsin has something, California has something, but poor Iowa has not, and Maine has not, and perhaps Massachusetts has not. Twenty or thirty other states have not. Therefore it becomes incumbent upon us to get something that will help.

Now I take issue with Mr. Carr on one proposition, but not on many others that he made. His proposition is that a publicity secured by the Interstate Commerce Commission would not have been a step in advance. Many of the steals that you and I know of would have been prevented if they had been compelled to lay their cards down on the table.

Mr. CARR, of New York. I did not say that it would not have been a step in advance, did I?

Mr. THORNE, of Iowa. I so understood you. In regard to the question of proper regulation, I am as anxious as anybody that steps forward shall be taken in regard to these security issues, so as to prevent fraud on the investors and the shippers of this country. Now in order to make progress, you have got to have a practical working program upon which there can be some agreement. I do not think it wise that a state or the nation should undertake the guarantee of a security issue. I think that would make the Government assume the responsibility of management. If you authorize the issuance of a given security, very rarely if ever will you deny an adequate return upon that security. It also embarrasses you in connection with other securities that are already outstanding, because it will be difficult to protect some of the stock and not other shares. That does not apply to the bonds.

Now with the limitation of the idea as it has been interpreted by both Mr. Thelen and Mr. Carr, that is in no sense guaranteeing a return on the issue.

I move as a substitute for the resolution offered the following:

Resolved, that it is the judgment of the National Association of Railway Commissioners that supervision and control by the state of the issuance of stocks and bonds, notes and other evidences of indebtedness of common carriers by rail should be preserved, but that such regulation may be properly supplemented in the public interest by a federal statute carefully framed to apply effective regulation along already tested lines, and that therefore the issuance of stocks, bonds, notes and other evidences of indebtedness by common carriers operating railroads constructed across state lines may properly be made subject by Congress, if within its power, to effective regulation by the Interstate Commerce Commission, or by a special tribunal created for the purpose, as may be deemed necessary, such regulation to be made in addition to and not be designed to oust state authority.

Mr. THOMPSON, of Illinois. Do you move that as a substitute?

Mr. THORNE, of Iowa. Yes.

Mr. FINN, of Kentucky. As Chairman of the Committee I withdraw the original resolution and accept the substitute.

The CHAIRMAN (Mr. Bristow). The Chairman of the Committee withdraws the original resolution and accepts the substitute offered by Mr. Commissioner Thorne. The substitute is now before the Association.

Mr. FINN, of Kentucky. That is, provided it will limit discussion.

Mr. THORNE, of Iowa. There is much argument in favor of supplanting state regulation by federal regulation of securities; but on the other hand there are many persons here who do not believe that is wise, who at the same time are ready to commit the Association to more efficient federal regulation. The resolution that I have proposed is practically the one that was offered in California, or intended so to be. I believe that this is a practical compromise whereby the Association almost unanimously can get together upon a proposition that will bring results.

Mr. EDGERTON, of California. Mr. Chairman, the substitute reduces the question down to this: Shall the present powers of the states over the issuance of stocks and bonds by interstate carriers be retained, and similar power given to the Interstate Commerce Commission over these same issues? Now I am frank to say that I cannot understand what the situation would be, for instance in the state of California, which has complete jurisdiction and power over the capitalization of interstate carriers where that capitalization for instance, in the case of bonds, encumbers the property of the common carrier in that state. I cannot understand what would be the situation if Congress should give to the Interstate Commerce Commission an equal control over that same capitalization. If for instance the state of California in its wisdom should then decide that

a given issue should not be made, it would be perfectly useless for the Interstate Commerce Commission to pass upon it at all, because you stop the issue before it can get to the Interstate Commerce Commission. On the other hand, if the Interstate Commerce Commission in its wisdom should determine that a given issue should be made, and application should then have to be made to the state of California, and it should determine that that issue should not be made, you have at once got an impossible condition, from my standpoint.

Mr. FINN, of Kentucky. That is the trouble this Convention gets into by modifying my original proposition.

Mr. JACKSON, of Wisconsin. The only difference under this resolution would be to add a safeguard, because the carrier would be compelled to obtain federal consent also, before the consent of the state would be good.

Mr. EBBERTSON, of California. That is not the condition now, because there is no federal control. At present the situation is simply this: Where there is in a state the physical property of a common carrier, upon which the lien of the proposed issue of bonds is to rest, the authorization of that state is now required for the issuance of those bonds, notwithstanding that the total bond issue may rest upon a carrier whose line goes through five states. Let me say that I think actual experience is always better than theory in this matter. In the report of the Committee on Capitalization and Intercompany Relations an incident is referred to. Let me give it to you very briefly. The Southern Pacific Railway asked for an authorization of \$55,000,000 of bonds. Under the law of California they applied to the California Commission for authority to make that issue. Now at once the California Commission was confronted with this situation: That railroad went through five states. The money to be derived from the issue of bonds was to be expended in the five states. The railroad had a program of betterment, improvement and extensions. I think something like \$15,000,000 of the total amount was to be expended in California, and we found that it was impossible for us to investigate the total purposes for which the money was to be used, or to give any real consideration as to the propriety of issuing those bonds as compared to the total capitalization of that road, and so all we did, and all we could do—and I will defy any other commission to do more—was to say in effect that in our judgment, considering the revenues of the road as reported to us in toto, and the purposes for which the money was to be used in California, it seemed reasonable that the issue should be made, and we authorized it.

The Southern Pacific then went to another state for like authorization of this same bond issue, and it was there denied, and we were advised later that one of the reasons why it was

denied was that that state felt that the railroad was not spending enough of the total amount of money in that state. Now I take it that presents an absolutely absurd situation. For instance, if each one of those five states having to pass upon that particular bond issue gets into a scramble to have the greatest amount of money spent in that state, the situation of the railroad becomes absolutely impossible, and obviously you arrive at a deadlock that cannot be solved, unless the five states get together and in some way divide that money up among themselves, a situation that I think none of you will insist is practicable.

Now those of us who advocate federal control are suggesting, not less regulation, but more. We feel that if the Federal Government has the authorization of these large interstate issues, it can give proper consideration to them, such as no state can now give, and that we will then get real regulation of these immense issues of securities. I think Mr. Thelen will agree with me on this, as to the stock of an interstate carrier incorporated in a state other than California, we have no control at all.

Mr. THELEN, of California. I agree with this, and I agree that it is a very serious danger, because a railroad incorporated in the state of Kentucky, but not having a single rail in the state of Kentucky, and running through eight or ten other states, will be subject to no regulation whatsoever, because the state of Kentucky will not regulate a railroad having no rails in the state of Kentucky, and the other states cannot regulate it, because they have no control over the capital stock of a foreign corporation. The result is that this corporation can, as far as the issue of stock is concerned, do all the mischief it pleases, and nobody can say a word.

Mr. EDGERTON, of California. Therefore I assert that as to stock there is no state control to-day, except possibly in the state which incorporates an interstate carrier. And that of course means, just as Mr. Thelen has suggested, that in many instances, where a railroad has no property within the state in which it incorporates, the stocks are issued by a carrier that is not in the state at all, and the state authorities of that state would have to give consideration to conditions in a number of other states, clear out to the Pacific coast, which I take it is an impossible duty. Now the advocates of federal control and regulation are urging more regulation and efficient regulation, as against what now amounts to no regulation or mere perfunctory regulation. And I make this final suggestion, as to a guaranty, that the California Public Utility Act contains a specific provision against any guaranty, and that same provision could be included in the federal statute. Having passed hundreds of millions of dollars of public utility securities, we can say

that in no instance has a public utility in California seriously demanded rates which would be a return upon that authorization.

Furthermore, I want to assert that there is one point at which publicity will fall down entirely, and that is a case where a company goes into bankruptcy. It must then be reorganized, and its new dress must have at least stock, and usually bonds. Now imagine what effect publicity would have upon the former owners of that property who took stock, we will say, or bonds, to repay their ownership in it, after it came out of receivership. What possible effect would publicity have upon that situation?

The CHAIRMAN (Mr. Bristow). That proposition has been withdrawn, of course.

Mr. EDGERTON, of California. Very good. In concluding, I only want to say this: I am limited, because of the limits of this resolution, and I make just this suggestion in sitting down, that if you give the federal authorities control over the issuance of capitalization, I think inevitably you must give them control over mergers and consolidations.

Mr. DUNCAN, of Indiana. Mr. President, these resolutions present very clearly the source and reasons of the contentions for federal control. The substitute resolution is no better than the original. Unless the states abandon the theory that they themselves must authorize the issue of stocks and bonds that are in turn to be reauthorized by the federal commission, the whole scheme will fail.

There is some justice in the contention of the railroads that there is too much regulation. There is a duplication of regulation, just as this substitute resolution seeks to keep the regulatory power of the state in force, and asks further regulation of the same subject by a federal commission of some kind. We ought to make up our minds to recommend to Congress either a total abandonment of any federal supervision whatever over stocks and bonds issued by carriers, or else we ought to be willing to forego every power that the states now exercise. If we fail to do those things, the whole complex situation will be continued.

For my part, I was bred to believe in the doctrine of state rights; but at the time this doctrine was inculcated, we had not the complex situation that we now have. There is in this country a continual and persistent march toward the centralization of control over these great carriers, and there is much reason for it. The reason extends to rates, and to all the other regulatory devices and powers over these carriers. Take the instance just illustrated by the gentleman from California (Mr. Edgerton). What could a railroad do now if it had to issue securities, if California granted permission, and Oregon refused



it? In such case the railroad can make no progress. I want to repeat, gentlemen, in all sincerity, that we must conclude now that we will advocate one theory or the other, or the complex situation will remain just as it is to-day.

Mr. THOMPSON, of Illinois. Mr. President and gentlemen of the Association, the Illinois Commission has been in existence only a few years, but in that time it has been pretty busily engaged in getting the machinery in working order, to carry out, as far as it could, the requirements of the law. Perhaps we have not had the time and the attention, or been so familiar with these problems that are now confronting this Association, as many of you have who have been connected with this work for years.

I have felt that the resolution as offered, and the one that has been adopted at previous sessions of this Association, will be far reaching. I am impressed with the belief that when the states voluntarily surrender, or by operation of law are required to surrender the power they have over the issuance of stock and bonds of the public utilities operating within their jurisdictions, they will surrender a right most valuable to the citizens of the states. Further, when that is done, you can see where the tendency of the time is now leading. When the door is once opened, there are those standing ready to enter, and when the entrance is made, the difficulty will be ever to close the door again. Why should we surrender state control over stocks and bonds unless state control over rates is also suspended? That will be the next question that will confront this Association. Why not surrender control of any movements of interstate carriers? Why not take over all, if any, is the question that we will be called upon to answer.

Now I am not here this afternoon to say just what method should be adopted with reference to the regulation of the issuance of securities, but it seems to me that some method should be devised by which the state can speak. You are going to have a situation arise the same as that which has arisen in Nebraska and Illinois. It has got to be settled somewhere. It is going to be conflict as to power, between the states and the Federal Government. Where shall the control rest? The state of Illinois, and all those states that have spoken with reference to the issuance of securities, have said that until the commission appointed under the laws of the state shall have given its authority to the issuance of securities, they shall be void. That is the language of the statute of Illinois. You overturn that law then, but you do not overturn the fact that the state is supreme with reference to rights of-way, and with reference to character of railroads, and supreme in the power to say that no company shall come into that state except under and by the authority of the state of Illinois. That is the power that is lodged in the

state. How much of this must the state surrender? We have the question presented here by the message of President Wilson to Congress, which has been read, and a joint committee of Congress has been appointed, that meets next week to consider these great questions concerning the regulation and control of common carriers, and not only carriers, but other public utilities as well. These are important questions. What will be the attitude of this Association with reference to the matters that are coming before that Committee? Suppose we go and lay down our hand and say, "Here, we are willing to surrender to the Interstate Commerce Commission the full power and authority over the issues of securities, because a complex situation has arisen, like that which has arisen between Arizona and California, and in other places." They can say, "That is true. That ought to be taken care of by surrendering this authority to the Interstate Commerce Commission, which can speak as one body and one authority." But when another subject is being considered before the Committee they can come back at you and say, "This is true of rates as well as of securities. You have a conflict of rates. There is only one power. It should be lodged in the hands of some one body, and that body should be the one to speak." Where will you draw the line? These are difficulties that are not easily solved. Yet I believe that the wisdom of the people, when they put their minds to it, will be able to solve the problem, both as to rates and as to securities, without destroying the power of the state over securities.

I recognize the fact that there is a strong argument in favor of some regulatory body having the power to say what shall be done with reference to the issue of securities. I feel the force of that argument just as much as any one here can feel it; but I want to say this, that if it comes to the point where this power is to be taken over by the Interstate Commerce Commission, and they assume that power and jurisdiction exclusively, there ought to be some provision of the law by which the states can speak. There ought to be a provision in the law saying that when the matter is up for the consideration of the Interstate Commerce Commission on the question of the issuance of securities, the states interested in that question, by reason of the fact that that public utility serves the people within those states, shall have reasonable notice, so that they can appear and present their views with reference to the matter, because they are to be affected. That utility serves not only interstate business but intrastate business, and the people of that state are interested in the success and value of the utility that serves them, and they should have the right to appear, to intervene, to object, to introduce evidence, to do anything that they want to do in order to show the true condition as it affects the public utilities within

the borders of their states; and if you do not have that opportunity, you are foreclosed altogether.

Now here is a question that you have got to consider, as I referred to it a moment ago. Your state says that no corporation can do business in that state without getting a charter from the state. Your state says that a certain corporation can do business, that it can issue stock. Who controls that? Who is going to speak there? You have got to deprive the state absolutely of the right to incorporate. You have got to take away that power and place in the hands of the federal authorities all the power of incorporation of public utilities to do interstate business.

I do not agree with Commissioner Finn at all on the question of guarantees. I do not believe that the Government ought to go into the guaranteeing business on any of these propositions. When the state of Illinois authorizes the issue of securities, there is a positive law staring the public in the face, stating that there is to be no guarantee of the values of the things authorized to be issued; but it goes to this extent, that when an authorization is made, the corporation must appear and show that it is for certain purposes, refundings, improvements, betterments, extensions and so forth, some one of the various things for which they may issue stocks and bonds. Further, they are to specify the purpose for which the money is to be used. The order will direct that it be used for that purpose, and they are required to report back to the Commission that the proceeds of the securities have been applied to that particular purpose. Now my idea would be that if you go to guaranteeing, you should take off all the brakes. Some are inclined to think that the proper way to handle this situation would be to remove all restrictions and limitations on the issuance of stocks, and allow these corporations to issue securities, on the theory that the people are interested in only two things, rates and service, and that the rates are always based upon the value of the property and not upon the amount of the securities issued. If that is to be done, then the old kiting process will go on as it did prior to any regulatory laws being enacted anywhere. If it was a question between the guaranteeing of stocks and bonds—by the Government, if they are to be authorized by the Interstate Commerce Commission—and Government ownership. I think the question would be decided pretty rapidly in favor of government ownership.

Mr. HALL, of Nebraska. May I ask you a question?

Mr. THOMPSON, of Illinois. Certainly.

Mr. HALL, of Nebraska. Suppose the Illinois Commission had obtained all of the facts for the purposes of publicity, as to the amount of money that had been invested in a certain utility, and

all of the schedules had been completely drawn up, just as your Commission had demanded to be necessary, could an intending purchaser rely solely upon the data on file with your Commission, and would that data be of value to him, or would he not have to employ expert accountants and statisticians, and take them into the office of your Commission and have the records opened to him, and spend weeks and months possibly in going through those records, in order to find out whether the securities were valuable or not?

Mr. THOMPSON, of Illinois. I do not understand that the Commission was organized for that purpose at all.

Mr. HALL, of Nebraska. No, I am saying under this scheme of publicity—

Mr. THOMPSON, of Illinois. I am not saying anything about publicity. I am discussing the other question.

The CHAIRMAN (Mr. Bristow). The question of publicity has been withdrawn. It is not now before the Convention. The Chairman of the Committee (Mr. Finn) withdrew the resolution as to publicity.

Mr. HALL, of Nebraska. I beg pardon.

Mr. CARR, of New York. Mr. President, Mr. Duncan of Indiana hit the nail on the head when he made the remarks about this resolution that is now pending. For my part I am seeking to remove the possibility of an impossibility of performance. This resolution makes it more difficult than ever to perform, because instead of reducing the number of commissions from say five to one, it adds one more authority to the five, making six, and I understand that is what we are seeking to do away with. There is no use in adding to the troubles of your children, and that is what the corporations are which are under your regulation now. They are looking to you to help them out of their difficulties all the time. They are not looking to you to make more trouble for them.

I move that the resolution as presented be amended by striking out the last part reading as follows:

"Such regulation to be made in addition to and not be designed to oust the state authority."

The motion was seconded.

Mr. FINN, of Kentucky. I should like to have the whole resolution read.

Mr. CARR, of New York. It reads as follows:

"Resolved, that it is the judgment of the National Association of Railway Commissioners that supervision and control by the states of the issuance of stocks, bonds, notes, and other evidences of indebtedness of common carriers by rail should be preserved, but that such regulation may be properly supplemented in the public interest by a federal statute carefully framed to apply effective regulation along already tested lines, and that therefore

the issuance of stocks, bonds, notes and other evidences of indebtedness by common carriers operating railroads constructed across state lines may be properly made subject by Congress, if within its power, to regulation by the Interstate Commerce Commission, or by a special tribunal created for the purpose, as may be deemed necessary."

The idea in putting in that first part of the resolution is intended to give notice that the states through this Association do not propose to give up their control which they now have of the intrastate carriers as distinguished from the interstate carriers, and that would be my intention in amending the resolution.

Mr. FINN, of Kentucky. Mr. President, I propose to take up only a few moments of your time. Mr. Carr of New York has just described these corporations as our children. I think that they are our parents.

Mr. CARR, of New York. They were once.

Mr. FINN, of Kentucky. They are our papas and our mammas. In place of the state or nation controlling them, they control us.

Mr. CARR, of New York. I do not agree with you.

Mr. FINN, of Kentucky. That is a difference of opinion. A law giving to the Federal Government the power to authorize the issuance of securities will of necessity prohibit State control or regulation over the issuance of securities of common carriers. In the interest of peace and harmony, which we have now secured, I was willing to withdraw my resolution and to accept the substitute offered by Mr. Thorne, which, according to my judgment, did not violate any principle which I believed was right. After its withdrawal, however, there has been presented to you in connection with the power of the Federal government to authorize the issuance of securities some very complex problems; for if the State governments assume the authority to authorize the issuance of stocks and bonds, and if this power also is given to the Federal Government this will necessarily result in a conflict of authority between the State and Federal governments that cannot be reconciled.

For my part it is my firm conviction that if this all important subject should be left to the exclusive control of Federal authorities then there is no course of reason or logic that should prevent all other matters relating to transportation being centralized in the Federal Government. I believe that this subject, as all other subjects, should be participated in both by the Federal Government and by the State government according to the terms of the Federal Constitution and in such a manner that the authority of either should not conflict with the authority of the other. If the Federal Government is delegated the authority to authorize the issue of securities then, of course, the State governments should not be granted this power for it is at once manifest that an irreconcilable conflict might result. An analysis

of the result following the approval of securities, either by the State or the Federal government, shows that the approval of these securities by governmental authority results in nothing more nor less than complete publicity.

No advocate of governmental authorization of the issue of securities will contend that the holders of such securities should be guaranteed a return upon them. If no return is guaranteed upon these securities then the holders of these securities are exactly in the same attitude as those who hold securities which have not been authorized by either the State or the Federal government. The solemn proceeding incident to governmental authorization is counted for naught so far as the holders of securities are concerned; and, yet this transaction may be counted for everything when it comes to the common carriers; for if a carrier with 10 million outstanding bonds, 5 million of which is water, receives the governmental authority to issue an additional 1 million which is a second mortgage upon the assets of the corporation by what course of reasoning can it be said that the authorization of the last million does not sanction the former issue of the 10 million, half of which is water.

I firmly believe in governmental regulation of the issuance of securities; but that regulation should be upon a basis in keeping with the relative rights of the carriers and the bond holders after the issue has been made. Securities issued by the authority of the government gives them a dignity which is incompatible with the further fact that the holders of such securities have no governmental guarantee of any return upon the investment.

So resolved to its last analysis the sole benefit incident to such a proceeding is publicity. Now, it is easy to condemn publicity as a means of avoiding the issue of worthless securities if, as a matter of fact, we cite the kind of publicity that was required by some States before they were granted the power to actually authorize and approve the issue of securities. Publicity in name and not in fact is as objectionable as regulation in name and not in fact. A publicity which would result in benefit must consist of real regulatory publicity and should require the carriers to come before both the Federal Commission, if it is an interstate carrier, and the respective State Commissions through which the carriers run and answer all questions and make a full and complete showing of all the facts incident to the proposed issue. The testimony should be reduced to writing and the Interstate Commerce Commission, together with the various State Commissions, should be required to make a finding of facts as the result of the testimony; and the carrier offering stocks or bonds to the public should be required to accompany each offer with the findings of fact made by the Interstate Commerce Commission, and the several State Commissions through which the car-

rier operates. In this way complete publicity will be made concerning all of the transactions of the carriers in the issue of their securities. Such regulatory publicity would avoid all of the stock and bond jobbing which has created a demand for a remedy for the evil. It will maintain the relative rights of the State and Federal governments without conflict of authority, and at the same time prohibit carriers, or banking organizations, who desire to reorganize railroads from putting on the market stocks and bonds which have no value. It will avoid the possibility of the Federal Courts using the securities issued by governmental authority as a basis of value upon which the carriers are entitled to a return. It will prevent the government from authorizing an issue (which possibly at the time should be authorized) without at the same time in effect giving its approval to former unjustifiable and indefensible transactions.

Of course it will not privilege the carriers to at once float their securities upon a 24 or 48 hour determination to do so, but the inconvenience and possible expense incident to securing money for such purposes will be more than offset by the benefits derived; and there is still the possibility that when the facts are found that the money market may be even better and the carrier may secure better terms at the conclusion of the investigation than at the time it conceived that it had a favorable opportunity to borrow money; unless, of course, capital and credit are centralized as the President of the United States described them to be when he stated "that such transactions are conducted by the same set of financiers trading with each other and that the same set of financiers are both the borrowers and the lenders" But there is not much chance for the President to be mistaken about his conclusions concerning the control of money and credit in this country and under such conditions delay is not a national consideration.

Therefore, as the withdrawal of my original proposition did not produce harmony, I will insist upon my original proposition.  
(President Thelen resumed the Chair.)

Mr. BRISTOW, of Kansas. Mr. President, I recognize that there are difficult problems in the transportation question, and we are now discussing one of them. I wanted to make a statement, in order that the record might disclose that there are at least two sides to the question, in regard to the inconsistency or the impracticability or undesirability of the states retaining their authority.

So far as the issue of stock is concerned, I do not feel that it is a matter of great consequence to the states. It represents no lien upon the property. But where property is mortgaged that is contained within a state, that is serving the people of the state, the state having certain functions to perform in regard to the administration of the government of those people, I feel that

that is depriving the state of authority which it ought to have. The Arizona case was presented very clearly and forcibly by the Commissioner from California (Mr. Edgerton), and it would appear that Arizona took an arbitrary and improper attitude toward this issue.

Mr. EDGERTON, of California. I did not want to say that.

Mr. BRISTOW, of Kansas. Arizona may not have taken an improper attitude, and Arizona may have been right. The mortgaging of the property which was contained within the boundaries of the state of Arizona for improvements to be made in California might be unjust to the people of Arizona. I have in mind an illustration now. There is a railroad operating in the state of Kansas which has three thousand miles of track in that state. A few years ago it mortgaged that property in order to buy a railroad that was a thousand miles west of our state, and more too. It bought the railroad. It was not a successful railroad. It bankrupted the company. For ten years and more that company has rendered poor and inferior service to the people of Kansas, because it was thrown into financial bankruptcy by this transaction. I do not believe that there should be taken from the constituted authorities of the state of Kansas the power to protect the people of the State of Kansas from such a service or such a transaction as that, which resulted to their detriment. I can see that commissions might some times err. They might refuse to concur in an issue that was proper. They might take an arbitrary position that was not justified. I am not so hopeless in regard to the efficacy of our Government as to believe that there is not now within the courts abundant authority to remedy such action, if the corporation suffered by such arbitrary act. So I do not want the statement to go unchallenged that a state, in refusing to permit the mortgaging of property within its state, to the detriment of the people it was serving, was taking an arbitrary position, because there are cases where it ought to have the authority to do that, in my opinion. (Applause.)

Mr. ELMQUIST, of Minnesota. Mr. President, the original motion presented by the gentleman from Kentucky has been withdrawn in favor of the substitute. The substitute has been amended by the gentleman from New York (Mr. Carr), and we are now informed that the honorable Chairman of the Committee on State and Federal Legislation (Mr. Finn) is again disposed to adhere to the original resolution.

As a substitute for all the pending motions, Mr. President, I move that this question be referred to the Committee on State and Federal Legislation.

Mr. FINN, of Kentucky. I will second that motion. (Laughter.)

The PRESIDENT. Gentlemen, you have heard the motion. If there is no further discussion, all in favor will signify by saying aye, those opposed no.



The motion was unanimously agreed to.

Mr. Carr, of New York. Mr. President, may I ask if it is the purpose of the Committee to present the matter further at this meeting of the Association? The reason I ask that question is this: I fear I shall be unable to attend the deliberations of this Association after today, much to my regret. If the matter does come before the Association, I wish to be recorded on behalf of my commission as being in favor of having the issue of stocks and bonds by interstate carriers regulated by the Interstate Commerce Commission, or some other administrative body which is given that power by Congress.

The President. The record will show, I think, fully and clearly the position of the Commissioner from New York.

A motion to adjourn is in order.

Mr. Finn, of Kentucky. I move that we adjourn.

Whereupon, at 5:15 p. m., November 16, 1916, the Convention adjourned until November 17, 1916, at 10 a. m.

#### FOURTH DAY'S PROCEEDINGS.

*Washington, D. C., November 17, 1916. 10 A. M.*

The Convention resumed its session.

The President: Gentlemen of the Convention, this is the last day of our convention, and I am sure that we will all work together, in order that what we have remaining before us may be promptly disposed of.

#### QUESTION OF PRIVILEGE.

Mr. Yates, of Illinois: Mr. President, I rise to a question of personal privilege, of common consent, or your consent, or whatever I need in order to get the opportunity to speak.

The President: You have the floor.

Mr. Yates, of Illinois: I find in the Washington Times of last evening this editorial, which refers to the thing that we were discussing just before Mr. Elmquist made his celebrated motion, involving the subject which he referred to last evening just before we adjourned. This is the editorial:

#### NOT A TRUSTWORTHY VIEW.

"The annual convention of railway commissioners never fails to sound a clarion call to defense of the forty-eight little commissions with conflicting

jurisdictions which make real supervision of the railroads impossible. This year the cry of 'help, or we perish', is merely more anguished than usual, because the sentiment in favor of unified, exclusive Federal control has gained ground so fast.

Naturally enough, the State commissioners don't want to be chucked out of their jobs. But we should like to see a canvass of ex-State railroad commissioners' opinions. They view the subject with less prejudice after they are out of office.

Recently Col. David J. Palmer, after serving on the Iowa Railroad Commission a longer time than any other man ever did, declared—having retired!—that the State commissions ought to be abolished and Federal authority given exclusive supervision of railroads. He guessed, too, that most of the ex-commissioners would feel the same way, save perhaps those in the South.

There are some former State commissioners on the present Interstate Commerce Commission; it would be interesting to know how they all feel.

Opinions of the little commissioners whose jobs are in the balance are sadly discounted in advance when they are so painfully unanimous. If they could agree half so well on some one other subject it would reduce most suspiciously the conflicts which make real regulation about impossible at present."

Mr. President, I would like to have this unkind, uncalled for and unholy suggestion referred, along with the other documents which went to the committee on Federal legislation last evening. I realize that I am speaking by common consent. I am not trying to provoke any discussion of any kind, but this is an absolutely, wholly gratuitous insult to the intelligence of every commissioner, by part of the press of Washington, characterizing every one of us as wholly unworthy of the positions which we occupy, with an added insult to my brethren of the South. I was born and bred in Illinois, but my father was from Kentucky and my grandfather from Virginia, and as a result of that I am as well acquainted with Southern members as with any other members of this convention; and I simply want to emphasize the fact that it is an extraordinary thing—it is a matter, of course, that we smile at, those of us who have been hammered by the papers for 20 years, but it is an extraordinary thing, is it not—that this kind of a fulmination should be directed at us when we are in session. The people of Washington do not care to read this stuff. People outside do not care to read this stuff. It is directed absolutely at us, in the hope that our judgment and our decision upon this question may be affected. Among other things it is a lie, because it says that we are absolutely unanimous in attempting to retain control of the thing that we have been talking about. Now, I venture to say that every man in this room, in all the days and hours that we have been here, has put personal interest entirely behind him, and has acted in the most conscientious manner in regard to this subject.

I should like to know whether the report of the Committee on Capitalization, the report of Mr. Edgerton's committee, will be discussed after a while.

The PRESIDENT: The status of that report, as I understand, is as follows: The Chairman of the Committee moved that it be

approved. There was no second to that motion. Commissioner Mills of Minnesota moved as a substitute that the thanks of the Convention be tendered to the committee and that the report be filed and printed. There was no second to that motion. That is the status of the matter.

Mr. YATES, of Illinois: It is still before the house, then. I realize that everybody wants to get away by four o'clock at the latest, and that by two o'clock a third of you will be gone. I do not want any misunderstanding about where I stand on this proposition. I do not ask any action. I do not ask that you dignify this attack upon your motives, but I earnestly urge your attention to the fact that there is a motive behind this movement to take away from the State commissions jurisdiction over stocks and bonds; and it is no answer to say, as a man said to me yesterday, that in some one State there may not be efficient State supervision. If you will pardon me one minute more, I want to say on that question just this one thing: Once upon a time, when I had the honor, for a few fleeting but lively years to be the Chief Executive of my State, I was asked to veto a bill which provided for municipal ownership of the Street railways in the city of Chicago. By the way, I did not veto it; not because I was in favor of the bill, for I was opposed to the bill. I knew it was unconstitutional. The Supreme Court took one look at it and held that it was unconstitutional, and I was very glad to let the Supreme Court do that, instead of doing it myself; but the only request made to me to veto that bill was by an honest man who came down to Springfield from Chicago, in the face of Deneen and Carter Harrison and everyone else, and made this one point: He said: "Governor Yates, if you cannot decide in your own mind that the giving of a bad power necessarily means a bad exercise of that bad power, then you should sign this bill. It is a presumption of fact and almost of law that a tribunal of public officials will do wrong when they can." I said: "I deny that absolutely. The presumption of law and the presumption of fact is that officials, whether a city council, a legislature, Congress or a Governor or other executive officer, will do right." Now, gentlemen, that is the presumption in regard to this matter; and inasmuch as the President has stated that this other matter will not probably come up for discussion, inasmuch as it is in that indefinite condition, I want these statements of mine to go into the record. In other words, I am so conscientiously in favor of the retention by the States of this power, and I am so convinced that the possession of this power will be wisely exercised by the States, that I want the committee to consider very seriously the remarkable opposition emphasized by this editorial, and I would like to have it referred, with the other documents in the case, to the Committee on Fed-

eral Legislation, and with your permission I will move that it be so referred.

The PRESIDENT: I understand it is your view that it will be sufficient punishment for this newspaper if this particular resolution be referred to the Committee on State and Federal Legislation. (Laughter.)

Mr. YATES, of Illinois: I am not in favor of punishment, though, with all due respect, I object to any levity upon the subject of this editorial. There is a nigger in the woodpile, there is an African in the fuel here. Somebody is so exercised for fear we will retain a little power in the several States that I, being a State rights republican, want my position understood. (Applause.)

The PRESIDENT: You have heard the motion that this editorial be referred with the other documents in the case, to the Committee on State and Federal Legislation.

The motion was seconded and unanimously agreed to.

### CAR SHORTAGE.

Mr. FUNK, of Illinois: Mr. President and gentlemen, Mr. Finn, the Chairman of the Committee on State and Federal Legislation, has very kindly yielded to me three minutes.

Mr. FINN, of Kentucky: All the time you want, Senator.

Mr. FUNK, of Illinois: It is relative to the matter of car shortage. It is unnecessary for me to go into it in detail, but only to mention the matter that there is a great car shortage all over the country. In view of the fact that the Committee on Car Service and Demurrage did not present a report, some ten or fifteen commissioners met night before last in a room and appointed an informal committee to prepare a resolution which I am now going to read, which will cover the views of the gentlemen who attended that meeting, and we hope will meet with the unanimous approval of the Association.

WHEREAS, there now prevails throughout the United States a shortage of cars, unprecedented in proportion and stupendous in its possibilities of damage to the industries of the country; and while this stringency in transportation facilities is general over the country, it is particularly acute in the central and western States; to such an extent has the shortage developed that business in many lines is paralyzed and people in many States are menaced by a famine in fuel and food stuffs; hundreds of thousands of bushels of grain in Iowa, Kansas, Nebraska and other States have been hauled to railway stations and dumped upon the ground for want of cars to move it to market; millions of dollars represented by this unmarketable product of the farms is jeopardized and the commercial equilibrium of the territory affected is imperiled; mines in Colorado and other States have been forced to suspend operations and industries dependent upon their product for fuel have been compelled to shut down or to seriously curtail their operations; perishable fruits and

vegetables are being held in western States with a prospect of partial and possible total loss;

AND WHEREAS, it appears from statistics recently made public by the American Railway Association that there were, for the twenty-four hour period ending November 1, 1916, 108,010 fewer cars in the United States than were required to transport shipments offered;

AND WHEREAS, it appears that the situation has reached such proportions that it has gotten beyond the control of the carriers themselves, as is evidenced by the recent action of the American Railway Association in naming a committee to confer with the Interstate Commerce Commission for the purpose of devising ways and means for enforcing the rules of the association regarding the return of foreign cars to their owners;

AND WHEREAS, the misuse and retention of cars by certain carriers has disturbed the transportation equilibrium in the country;

AND WHEREAS, under the Act to regulate commerce as now in force, the Interstate Commerce Commission appears to lack the necessary authority, except after hearing and consequent delay, to make rules and issue orders governing the proper return of equipment to the lines owning the same;

THEREFORE, BE IT RESOLVED, That a committee on car service and demurrage, consisting of seven members with full power to represent this Association, be appointed by the president to confer with the Interstate Commerce Commission for the purpose of securing such immediate relief as is possible in this emergency.

AND BE IT FURTHER RESOLVED, That the said committee on car service and demurrage be instructed to present these resolutions to the Congress of the United States and to urge upon that body the adoption of an amendment to the Act to regulate commerce which will confer upon the Interstate Commerce Commission authority to establish rules and regulations with respect to exchange, interchange and return of equipment between the various railroads operating in the United States;

AND BE IT FURTHER RESOLVED, That it is the sense of this Association that one of the principal reasons for the car shortage in many sections of this country is failure of certain of the carriers to promptly return the equipment, which has been unloaded at points on their lines, to the roads owning the same; and further that this inconvenience and financial loss now being suffered by many of the shippers would be materially reduced if all the carriers would immediately proceed to return the cars they are now using to the roads owning the same;

AND BE IT FURTHER RESOLVED, That it is the sense of this Association that the Interstate Commerce Commission, in its consideration of the application of the carriers for an increased charge for demurrage, should compare the relief to be gained thereby with the additional relief that might be afforded by a material increase in the per diem car rental charge assessed by the carriers in their interchange agreements.

The PRESIDENT: Gentlemen, you have heard the resolutions.

Mr. FUNK, of Illinois: Mr. President, I move the adoption of the resolutions.

The PRESIDENT: The motion has been made and seconded. Is there any discussion?

The resolutions were unanimously agreed to.

The PRESIDENT: The Chair will state that before the adjournment of this convention the new Committee on Car Service and Demurrage will be appointed, so that this committee may at once confer with the Interstate Commerce Commission and take such other action as may seem advisable.

STATE AND FEDERAL LEGISLATION.

The PRESIDENT. We will now resume consideration of the report of the Committee on State and Federal Legislation.

Mr. FINN, of Kentucky. I wish the president to recognize Mr. Thorne.

Mr. THORNE, of Iowa: Gentlemen, your committee regret that nothing definite of record has been stated by this convention relative to the issuance of securities. Your committee were inclined at first to pass it over completely, although it was referred to the committee; but on further deliberation the committee have unanimously agreed upon a resolution which we are going to submit. We do not believe that it is wise for the convention to consume further time in debate relative to the subject, because we believe that all the members here present have their minds made up one way or the other.

In framing the resolution we have not satisfied the mind of each member. One man had to yield on one side, and another man had to yield on the other side, but we believe the result will be a substantial step forward, and at the same time that the power of the States will be reserved as it is today under the Constitution. I will not attempt any discussion of the resolution, but will read it to you, and suggest that your committee who appear before the Newlands committee may report the action of this convention, if the resolution is adopted by a majority of those present. If your action is not favorable, all right. The action will refer only to this particular resolution, and will not refer to the former action taken by the convention. The resolution is as follows:

RESOLVED, That the Act to regulate commerce should be amended, giving jurisdiction to the Interstate Commerce Commission over the issuance of securities by carriers whose lines of railway cross State lines, so as to insure honesty and the proper publicity in the issuance of said securities and the application of the proceeds from the sale of same to the legitimate purposes for which the said companies have been organized and authorized to operate, the said jurisdiction being granted to the Interstate Commerce Commission to such an extent only as will not interfere with the constitutional rights of the States.

It must be remembered that we are now referring to an amendment to the Act, not a constitutional amendment.

Mr. HALL, of Nebraska. Mr. President, the Supreme Court of the United States has repeatedly held that when the Federal body passes laws, local laws and local rules and regulations give way to the Federal authority. As soon as the Federal body speaks, would not that immediately place the entire jurisdiction over the issuance of securities in the Federal body?

Mr. THORNE, of Iowa: We think not, Mr. Hall. It is difficult for me to conceive how, when a State creates a corporation, you can take away from the State the control of that corporation, to the

extent that it does not burden interstate commerce. Mr. President, I move the adoption of the resolution.

Mr. BRISTOW, of Kansas: Mr. President, the convention will be very much divided in opinion as to the wisdom of this action. If our representatives who go before the joint committee of the House and Senate present this resolution, there will be State commissions represented there that will take the opposite view. It will be unfortunate for us to go before that committee appearing against each other upon matters of concern, and it seems to me that the action taken yesterday on motion of Mr. Elmquist was the wise action to take. Let us leave it to our representatives, knowing as they all do the sentiments of the various States in this country, to work out the best possible course that they can take in protecting and representing the interests of each State. Indeed, it seems to me that it is better for this committee of ours to give every State commission fair opportunity to be heard before this joint committee, and to present its own views, rather than to handicap ourselves by possibly a bare majority passing this resolution, or possibly a majority defeating it. I would rather leave it to the committee that represents us, the same as the convention a year ago left the valuation matter to the committee, which has worked out well. If we had undertaken at that time to determine what line of policy we would pursue in the details of valuation, we would have been hopelessly involved in discussion; but it has turned out that the action of our representatives, and especially of our solicitor, has satisfied everybody, and the divergent views then held have not conflicted in any way, or weakened our position before the country or before Congress. It seems to me it would be very much better to refer this to the committee.

The PRESIDENT: Do you move as a substitute that the resolution be referred to the Committee on State and Federal Legislation?

Mr. BRISTOW, of Kansas: I would do that, but a motion to refer is not debatable, and I do not want to cut off debate.

Mr. THORNE, of Iowa: I do not care to debate it.

Mr. BRISTOW, of Kansas: If there is no one who desires to be heard, I will make such a motion, that it be referred to the committee.

Mr. DUNCAN, of Indiana: I desire to be heard.

The PRESIDENT: Gentlemen, I assume that we all have very close at heart the desirability of finishing today, and of not leaving important matters to the last few minutes of the convention. I am sure every one of us feels strongly that way, so I take it that every commissioner here will help along the good work by not speaking any oftener than is necessary, and by making his remarks as short as is consistent.

Mr. EDGERTON, of California: Knowing that the president did not address that warning to me, because he does not dare to (laughter), I want to say that I get up here in no mushy spirit

of harmony, because ordinarily I do not like harmony or the results of it. I think a real fight brings out better results than harmony; but as one representative, and a minor one, perhaps, of the radical sentiment in favor of Federal control—I agree with what Senator Bristow says, and I think he may be fairly considered as typifying the opposite view from mine, on the main question, from what I have heard of his views—I will say this frankly with relation to the recommendations made by the committee of which I am chairman, that I doubt the wisdom of attempting at this late hour to commit the Association to definite, radical views, when we know that a very large number of commissions have not such views, and in fact have very different views. So, I say, in no spirit of harmony but in a spirit of fight, I agree with Senator Bristow. (Laughter.)

Mr. DUNCAN, of Indiana: Mr. President, in Indiana there are some embarrassments to the Federal Control of stock and bond issues of interstate carriers, arising out of our interurban system. We have the largest investment in interurban railways of any state in the union. We have the largest traction terminal in the world. Many millions of dollars are invested in these enterprises. They are in this situation: they run from Indianapolis, practically 200 miles, to Chicago, with a very small terminus in Chicago. They extend to Union City, just on the Ohio line. They go to Richmond, and they go to Louisville. These properties are peculiarly Indiana properties. Whatever this Association concludes to do, the voice of Indiana would be to exclude from Federal control the interurban properties, and I hope the committee that appears before the Newlands committee will represent the views of Indiana that way.

Mr. THORNE, of Iowa: I do not propose to engage in debate, but the committee feel that a too prolonged discussion is being precipitated on this resolution. We have some other propositions of very great importance upon which we want an expression of the opinion of the convention. Therefore if Senator Bristow will make his motion to refer, I will second it on behalf of the committee.

Mr. BRISTOW, of Kansas: I move that the resolution offered by Mr. Thorne be referred to the committee on State and Federal Legislation.

Mr. THORNE, of Iowa: I second that.

The motion was unanimously agreed to.

Mr. FINN, of Kentucky: Will the Chair recognize Commissioner Clarke of Nebraska, to read a resolution?

The PRESIDENT: The Chair recognizes Mr. Clarke of Nebraska.

Mr. CLARKE, of Nebraska: This is the resolution:

We believe the time of the Interstate Commerce Commission and the time consumed in disposing of cases would be conserved by the creation of subordinate regional commissions, each one composed of three men appointed for fixed periods, and receiving salaries similar to those received by the members of our Federal courts, with or without a member of the In-



terstate Commerce Commission sitting as a member of said tribunal, the right being reserved to interested parties of securing a review by the Interstate Commerce Commission under conditions analogous to those now prevailing in regard to appeals from the lower Federal courts to the Supreme Court of the United States.

I might say on behalf of the committee that its idea in the presentation of this resolution is to have these cases heard by bodies or tribunals located nearer to the places where the issues arise, and who may be more familiar with the actual conditions that obtain in those territories. On behalf of the committee, in order to bring it before the convention, I move the adoption of the resolution.

Mr. RICHARDS, of South Carolina: I second the motion.

The PRESIDENT: The matter is before the convention.

Mr. THORNE, of Iowa: Mr. President, in order that a wrong conception may not be held in the minds of gentlemen before they make up their conclusions, I may outline briefly the situation that confronts a person trying cases before the Interstate Commerce Commission under present conditions.

I believe I am safe in saying that fully nine-tenths of the cases are tried, not before members of the Commission. That is a serious fact to consider. Would you not rather try your case before three men occupying similar positions in our system of government, so far as tenure of office is concerned, to those occupied by your lower Federal courts, than to try your case before examiners or referees who do not render the decision? In other words, when you get a decision from a person, do you not like to have had the privilege of trying your case before that person? With the present great volume of business before the Interstate Commerce Commission you cannot do that. This is no criticism whatsoever of the Commission. In lieu of that system we suggest regional subordinate commissions. At present the examiners who hear the cases make reports to the commission. Under this system which we propose you are going to have a chance to be heard before the fellows who decide the case and are responsible for the decision. This proposition is by no means a new one, but it is one of two or three alternatives that have been suggested.

Another alternative to relieve the present congested situation is that you shall increase your present Interstate Commerce Commission, by a modest increase now and a large increase later, until you shall have fifteen members scattered over the United States, one tribunal composed of fifteen members, a large, unwieldy body. You will never get the serious attention of a majority of that commission to any case that you ever try, except a case of the most colossal importance. It would be physically impossible for such a body to get together and pass upon the cases. Ought you not to have an Interstate Commerce Commission that will analyze and consider the proposition involved in cases of large importance, as the Supreme Court of the United States does today? On the mat-

ters and issues of great moment that reach the Supreme Court of the United States, I am told that each member of the Supreme Court gives careful attention to the whole case, reading all the briefs, and the record sufficiently to advise him of the points at issue.

With an Interstate Commerce Commission of fifteen members, you will also have interminable delays, if they attempt to have discussions of the cases. Would you like to be a permanent member of a board of fifteen? Nobody is proposing at the present time a definite number of fifteen, but some people are proposing nine, and the idea is to further increase it until the Interstate Commerce Commission will divide itself up into different commissions over the country. Our alternative is to prevent that kind of an increase in the Interstate Commerce Commission. We propose to start along another line, and to have subordinate commissions.

Now the question is raised, will not that delay appeals before the Interstate Commerce Commission, because there will be so many appeals? It is the thought of your committee, three members of whom have been before the Interstate Commerce Commission, that instead of lengthening the time for the proper disposition of cases it will shorten it; because in the great majority of cases you will get your hearing as you do to-day in the Federal courts, and you will be in the same position that you are to-day; because to-day the case is tried before an examiner, and then referred up to the Interstate Commerce Commission, and you have to reach it in due process of time, the difference between the present condition and what we propose being that then you will have a hearing before the body that decides the case, and you will not have to come to Washington to argue your case except in the event of an appeal.

It is our thought that this process of regional subordinate commissions meets a well justified demand for improvement in the present machinery of our regulatory system, and it is worthy of your support.

The PRESIDENT: Is there further discussion?

Mr. BRISTOW, of Kansas: Mr. President, I appreciate the judgment of Commissioner Thorne and the committee in regard to this matter. Of course we all know that there are different opinions as to the best way of reorganizing the Interstate Commerce Commission, if reorganization is necessary. The suggestion has been made, backed by some of the best thinkers of the country, in favor of enlarging the commission and permitting it to subdivide its work, assigning the work to the various members or groups of members. That I believe is the opinion of the commission itself.

Then there is the idea that has been suggested by Mr. Thorne, and a joint committee of the two Houses of Congress will meet

next Monday for the purpose of considering these various opinions.

I take it that gentlemen here have different views upon this question. For myself I am not clear. I have given some thought to it—not so much as I would like to give—but I am not clear as to what ought to be done. I would not want to be committed by a vote of the convention, because my views, after more careful consideration, might not be in harmony with those views, and it seems to me that it would be better to have Commissioner Thorne and those who believe in that view go before this joint committee, and let our Committee on Federal Legislation give all of the commissions full opportunity to present their views, in order that the joint committee may have the privilege of hearing the views of all the commissions throughout the various States, from their point of view. Believing that to be proper, I move that this resolution be referred to the Committee on Federal Legislation.

The PRESIDENT: Is there a second to that motion?

Mr. SHAW, of Illinois: I second the motion.

Mr. THORNE, of Iowa: Mr. President, by consent I would like to speak in regard to that.

The PRESIDENT: Very well.

Mr. THORNE, of Iowa: The idea, as I understand it, is not to shut off any commission whatsoever from appearing before the joint committee. The proposition is as was stated yesterday. Other organizations in this country are coming forward with concrete propositions of a constructive character, and it would seem to me that of all associations in this nation, the National Association of Railway Commissioners could surely, out of their experience, come forward with at least a few suggestions of that character. The other recommendations that are proposed by those organizations have behind them the weight and momentum of the support of such organizations. I know that does not have any effect on the mind of Senator Bristow. It may not have any effect on the mind of Honorable Mr. Adamson, who has honored us by his presence here this morning. I do not believe it does have much weight with him, because when people commence to tell him who supports a proposition, and whom they represent, Mr. Adamson cuts them off and tells them to get busy on what they propose, and the arguments in favor of it, and to just leave out the rest. But I do not know that in the minds of many others that is not true, and a suggestion by an individual commissioner will not have nearly the weight attached to it that a suggestion would have coming from a majority of the commissions assembled here at our annual convention. I sincerely trust that our organization will not adopt the policy of passing over the propositions, but will give serious

consideration to their wisdom. There may be some who have not considered them in the past, but there are others who have considered them, and I believe they are in a position this morning where they are willing to act. I hope that the motion to refer this particular resolution will be defeated.

The PRESIDENT: Is there further discussion? The Chair will waive the usual rule, so that every one who desires may have a chance to discuss this matter.

Mr. TAYLOR, of Nebraska: Mr. President, if that is to be the rule I wish to say a word. I have the most profound respect for the judgment and opinion of Senator Bristow, so much so that when I find my mind running contrary to his opinion I am led the more to inventory my own conclusion, and to be more doubtful concerning it. However, it occurs to me that this Association occupies a rather peculiar position before the country to-day, in that it is supposed at least to be composed of men more or less expert in the matter of railroad regulation; and from such experts the public expects leadership. Now this step proposed by the committee may not be the best step, but it is conceded, I think almost unanimously, that the machinery now in force for the administration of interstate regulation is breaking down, and that some change is necessary to make it effective and efficient. I think there is great force in the objections urged by Mr. Thorne to the further extension and enlargement of the membership of the commission itself, and I think further there is distinct weight in the contention that the commission should be more localized. Therefore subordinate commissions, stationed in the various parts of the country, the members being residents of their own districts, and who become acquainted with the local conditions, ought to be able to act more intelligently and justly than men whose residence is in Washington, and who take only an occasional step, as our commissioners do at the present time.

For that reason, and because I believe this to be a step in the right direction, and because further I think this commission should express an opinion, whether a unanimous opinion or not, as to our idea concerning an improvement in the machinery for interstate regulation. I hope this motion of Senator Bristow will not prevail, but that the resolution offered by the committee may be adopted.

The PRESIDENT: Is there further discussion?

Mr. WALKER, of New York: I do not want to take the time of the convention, but I want to express one thought. I am in sympathy with the purposes of the resolution, but it seems to me it is too specific in providing for boards of three, and that a year hence, after the Newlands committee has reported, and after we have had a thorough discussion of different proposi-

tions for increasing or augmenting the machinery of the Interstate Commerce Commission, we might not reach the same conclusion that this committee has reached to-day. Therefore I would suggest that a resolution in more general terms would be a wiser one.

The PRESIDENT: Is there further discussion? The question before the convention is the motion of Senator Bristow.

Mr. BRISTOW, of Kansas: Mr. President, I beg pardon for taking so much time. I should not do it, but I am rather curious to know how many of us are finally getting well defined ideas as to the wisdom of this specific and definite plan? Are there other plans that may be better, if we could hear them presented and discussed here? Can we, in this casual discussion, lasting but an hour or less, come to conclusions in this hasty fashion, when a joint committee of Congress is to spend months in considering the same question? Must we bind ourselves in a concrete way to a certain course at the very inception of this discussion? It seems to me to be unwise; and I suggest that the views of Mr. Thorne and his committee, and the views of other members, be submitted to the joint committee, in order that they may understand fully the views of every one. And then I think, as has been suggested by the gentleman from New York (Mr. Walker), that after this committee of Congress has heard these discussions, and this hearing has been conducted for months, as I believe it will be, we will then be far more able to come to wiser and better conclusions than we are now. For that reason I believe it to be much better to refer the resolution to the committee, and to let us study the question ourselves while the joint committee of Congress is discussing it as well.

The PRESIDENT: If there is no further desire for discussion, the question before the convention is whether or not Senator Bristow's motion shall prevail, that this resolution be referred to the new committee on State and Federal Legislation.

The question was taken, and on a rising vote there were, ayes 15, noes 18.

The PRESIDENT: The motion is defeated. The question now before the Association is the adoption of the resolution as presented. Is there further discussion on that point?

Mr. NILES, of New Hampshire: Mr. President, I feel exactly the same as Mr. Walker does about the difficulty which he has suggested. It seems to me that this resolution is framed as if we were actually now legislating. It goes altogether too much into details. I am very sure that if I had the responsibility for drafting a bill providing for regional representation of the Commission, I should do it in some slightly different form at least from that proposed, and I do wish that the committee could give us something more general, expressing the desire of the

association for regional representation of the commission, without going so much into detail. I would be inclined to vote for that, for I have long felt that that is essential.

Mr. WALKER, of New York: Will Commissioner Niles prepare a substitute resolution?

Mr. FINN, of Kentucky: How would this do:

We believe the time of the Interstate Commerce Commission and the time consumed in disposing of cases would be conserved by the creation of subordinate regional commissions, the right being reserved to interested parties of securing a review by the Interstate Commerce Commission, under conditions analogous to those now prevailing in regard to appeals from the lower federal courts to the Supreme Court of the United States.

The PRESIDENT: Do you offer that as a substitute for the resolution originally drafted?

Mr. FINN, of Kentucky: Yes.

The PRESIDENT: Does the second of the original resolution accept the substitute?

Mr. RICHARDS, of South Carolina: I do.

Mr. YATES, of Illinois: I do not understand how you modify it.

Mr. FINN, of Kentucky: It strikes out details—"composed of three men, appointed for fixed periods and receiving the salaries received by the judges of the Federal courts," etc.

Mr. JACKSON, of Wisconsin: I think myself that something more general than the original resolution would be more suitable, and it occurs to me that even the substitute is too specific. It occurs to me that there might be cases involving the entire country, and not simply a locality, and which could not properly be determined by one of the regional bodies. It occurs to me that cases might often arise where the entire Federal body ought to hear the thing as an issue.

Mr. THORNE, of Iowa: To hear it de novo?

Mr. JACKSON, of Wisconsin: For instance, a trans-continental rate case might involve the whole country.

The PRESIDENT: I do not understand that this resolution necessarily precludes the Interstate Commerce Commission from hearing cases if it so desires. The resolution simply says—

"We believe the time of the Interstate Commerce Commission and the time consumed in disposing of cases would be conserved by the creation of subordinate regional commissions—"

And so forth; but there is nothing in the resolution which defines jurisdiction, or precludes the Commission as a whole, as I understand it, from hearing any case.

Mr. JACKSON, of Wisconsin: Perhaps I misunderstood it, but I thought and still think it gives the impression of appellate jurisdiction to the Federal body in Washington.

Mr. THORNE, of Iowa: There is no attempt to deny original jurisdiction to the Commission.

Mr. JACKSON, of Wisconsin: As I heard it read, it spoke of their appellate jurisdiction, in the same way that the Supreme Court and Federal courts have jurisdiction.

Mr. EDGERTON, of California: Mr. President, I am in the same frame of mind once more, and again in the company of my opposite, Senator Bristow, and also in the same frame of mind as Mr. Niles. I am asked here, and we are asked here, to pass upon a resolution the effect of which most of us do not understand. Frankly I do not understand it. For instance, if the result of thus establishing a subordinate tribunal is to provide an appeal from that subordinate tribunal to the main one, we have complicated our machinery again and have gone backward. That is the thing we have tried to get away from, and that we did succeed in getting away from when the Commerce Court was abolished, with its appellate jurisdiction from the Interstate Commerce Commission. I doubt if the country would accept with any pleasure whatever any appeal involving delay, from a subordinate tribunal of the Interstate Commerce Commission to the main one. The suggestion that original jurisdiction is not denied to the Interstate Commerce Commission is, I think, rather theoretical than practical. You have already suggested that the Interstate Commerce Commission now has too much to do, and obviously, if these original commissions are established, the original jurisdiction left to the main body will not be exercised to any great extent. You have said that it is impossible, that there is too much work to do. Now do you want deliberately to adopt a resolution here which may result in another appeal and in more complicated machinery, and that really takes a step backward? I am not suggesting that these things will be done, but it is possible under this resolution, and I do not know. I cannot vote intelligently on this resolution until I know, and I do not know whether the committee knows what the result will be.

Mr. WALKER, of New York: Mr. President, just one word. If we adopt this resolution, even in the proposed substitute form, we commit ourselves to the principle of subordinate boards or commissions. I for one think it is too early for this Association to place itself on record in favor of that specific form of augmenting the machinery of the Interstate Commerce Commission, and I should favor a resolution that is still more general even than the substitute resolution.

The PRESIDENT: Have you any suggestions to make as to the form of such substitute resolution?

Mr. WALKER, of New York: Mr. President, I think the declaration that this Association believes in augmenting or increasing the machinery of the Interstate Commerce Commission, so as to

enable it better to perform its duties for the whole country, would satisfy everybody.

The PRESIDENT: I do not know whether it would satisfy the committee. Possibly the committee will inform us on that subject. Is there any further discussion?

Mr. YATES, of Illinois: I should like to say one word more. I do not want to establish a record of getting in here at the last minute and doing too much talking, but I am opposed to this resolution for several reasons. In the first place, I think it refers to what you might call the internal management of the Interstate Commerce Commission. We resent very much efforts to interfere with the things that we do or want to do, and yet we are calmly suggesting here, to cut a long story short, an interference with their internal affairs. If the State Bar Association of Illinois, for example, or some other body that thought they had the right to make the suggestion, were to come in and complain that the Illinois State Commission were not giving attention enough to the matters coming before the Commission, I for one, speaking absolutely for myself and not attempting to represent any one else particularly, would in popular parlance be inclined "to get sore." I am not suggesting that the members of the Interstate Commerce Commission would give way to any such undignified feeling. I understand the ground of complaint to be that in the trial of cases before the Interstate Commerce Commission a great deal of testimony and argument is introduced before examiners. I confess I have not the experience which it is intimated that some gentlemen have in arguing cases before the Interstate Commerce Commission, but some things I do know, and I do know that the large number of cases and the large amount of business constantly being brought before our Illinois Commission absolutely necessitate at times the taking of some testimony before examiners. We are not bound by their conclusions, and we do not surrender our jurisdiction to them; but I can readily see how the Interstate Commerce Commissioners cannot give all their time to this matter of hearing cases from beginning to end.

In the next place, it is one of the oft-repeated slogans and war-cries of the carriers that they now have too many tribunals to go before. Here you are calmly proposing to institute perhaps fifteen more, or ten, or some other number, and as Mr. Walker has said, I do not think it is desirable to augment the machinery any more. It seems to me we are thereby playing into the hands of those into whose hands we ought not to play.

Mr. DUNCAN, of Indiana: Mr. President, the question here is not whether the Interstate Commerce Commission would be pleased with what we do, but the question is whether the people will be better served by the plan proposed than by the existing



machinery. The danger of all rate regulation, and of all regulatory bodies, is that they will fail to meet one prime end which they were created to serve, that is the speedy consideration and determination of the questions presented. I know in my own State the most severe criticism we have had against our commission has been that we have not speedily disposed of the business before us. I think it is no reflection on the Interstate Commerce Commission that it has been unable to dispose of the business as rapidly as the people have demanded it should be disposed of. The enormous amount of it forbids the determination of matters earlier than they have been determined. I am in favor of these regional boards or commissions, that is as a plan or theory for expediting the people's business. It can be very easily adjusted by the law-makers in devising the scheme, so that the railroads themselves will have no more commissions to appear before than they do now. For instance, if the country is divided into say ten regional commission districts, and the commission in each region hears the matters exclusively confined to that particular region that now go before the Interstate Commerce Commission, it seems to me there would be no practical difficulty about that. The Interstate Commerce Commission could be given jurisdiction over matters that interlap between these regional commission districts. This is only a suggestion, but the law-makers can easily create the machinery that will expedite the people's business, and impose upon the carriers no greater hardship than they now have, if it is a hardship at all, in appearing before these regulatory bodies.

Mr. THOMPSON, of Illinois: Mr. President—

Mr. THORNE, of Iowa: Judge Thompson, I may save your time if I may be permitted to offer a substitute for a certain clause at the end of the resolution.

Mr. THOMPSON, of Illinois: If you are going to amend it, I will say nothing until I hear the amendment.

Mr. THORNE, of Iowa: The proposition is this: It is not the desire of the committee to enforce details upon you which you have not had adequate time to consider, but it is the thought of the committee that there are certain basic propositions upon which the sentiment is already sufficiently crystallized to justify their passage. Instead of providing the method of appeal, it is now proposed to substitute the words "the right being reserved for appeal in proper cases, to the Interstate Commerce Commission." I want you to know that there is no attempt to define the original jurisdiction of either the subordinate tribunal or of the Interstate Commerce Commission. The Supreme Court of our State may have original jurisdiction and appellate jurisdiction on different propositions. Your Interstate Commerce Commission may have original jurisdiction and appellate jurisdiction.

We do not attempt to go into that detail at all. It is suggested that either body may have such jurisdiction as Congress may see fit to give it. The way the resolution will read now is this:

"We believe the time of the Interstate Commerce Commission and the time consumed in the disposing of cases would be conserved by the creation of subordinate regional commissions, the right being reserved for appeal in proper cases to the Interstate Commerce Commission."

Mr. FINN, of Kentucky: Mr. President,—

The PRESIDENT: Mr. Finn, you are the chairman of the committee. Do you accept that substitute?

Mr. FINN, of Kentucky: Yes.

The PRESIDENT: Does the second accept it?

Mr. RICHARDS, of South Carolina: Yes.

Mr. THOMPSON, of Illinois: That relieves the subject simply of the details, and that is all. What thought I have given to this subject leads me to believe that there is some revision or change needed of the method under which the Interstate Commerce Commission operates in the hearing of cases. What is the best method, whether regional or some other? This resolution implies that the convention has deliberately formed its opinion with reference to regional or subordinate bodies, appointed by Congress or some other power, to hear these matters and determine them, and then kindly provide an appeal to some other body. That is what this resolution means. Now whether that is the best possible machinery to transact the people's business and get a prompt decision of the matters in which they are interested is a matter that I am not so clear about. It may be the best. It may be when the hearing is had before the Newlands committee, at which hearing the committee to be appointed by the President of this Association will attend, they will come to the conclusion that that is the best thing, but we do not know. Still we are committing ourselves to a definite thing, namely a regional body. Now I appreciate everything that the committee has said, and that Mr. Thorne has spoken about, that there are some grievances that those who try cases before the Interstate Commerce Commission have just cause to complain about. There ought to be a hearing, and there ought to be an opportunity to object and to except, just as we have the opportunity in courts of chancery when a matter is heard before the Master, and then is carried up on objection to the Master's report, and exceptions, and the Court passes upon the whole case. That is one of the things not now provided for by the methods of procedure of the Interstate Commerce Commission, and that is one of the vicious things about it; but would a regional board be better than some examiner or representative of the Interstate Commerce Commission who stands in the same

relation to that commission as does the Master in Chancery to the court? That is another idea suggested by some. Which is the better? Which would be the more prompt? That case goes from the Master immediately to the court, and the court then passes upon it. If it goes to the regional body, they hear it, consider it, determine it, and make findings and an order, and then the appeal goes on to the Interstate Commerce Commission. Are you getting more prompt relief for the people, or are you providing by the regional board a means by which these things may be delayed? It seems to me, gentlemen, that we are not going to strengthen ourselves greatly before any legislative committee or the Congress by saying that now we declare that this shall be the thing that we stand for, when there is no unanimity in the standing.

I feel that this committee had better go unhampered to determine, after it hears and knows what has taken place, what will be its recommendations to the joint committee of Congress that is investigating the subject. Then our committee will have some reason for the presentation of the ideas and views that it will express. Would not that be better?

I appreciate what Commissioner Thorne says, that we ought to have some concrete, constructive plan; but first we want to have the minds of the committee focused upon the situation to such an extent that they can say, "This is the better plan, and the only thing we can see that is a good plan." Is that the attitude and mind of the Association at the present time? I do not think it is.

The PRESIDENT: If there is no further discussion, Commissioner Thorne will close.

Mr. THORNE, of Iowa: As to the suggestion that we ought to wait until this investigation is finished or under way, the proposition is well taken that a person does not like to make up his mind upon a question until he has had an opportunity to give it thought. But, gentlemen, this is our business. We are not a legislative committee. We are a group of commissions. If we have not had any experience in this line of work, then we ought not to speak. If we have not any conclusions in our minds, then we ought not to speak. If we have arrived at conclusions in regard to the subject, it seems to me that now is absolutely the only time when we can speak and have any weight. A year from now the thing will be completed. The fact is that our committee is supposed to go before the Newlands committee within the next few days or weeks. Are we going without any concrete, any constructive proposition whatever? I think it would be a grave error to come before you with a mass of detailed propositions; but I think it is fair to come before you with a few fundamental propositions with which we have had actual, con-

crete experience. Now the various commissions, every one of them, have a right to appear before the Newlands committee, and no action of this Association could possibly prevent their appearance. But you are not going to get forty-eight commissions to appear before that committee. The most of the commissions represented here to-day are going home to-night, or probably will. Some may stay over for the first few days and hear some of the opening discussion, and the railroads will present their side. I understand they are prepared to present their side. I understand they are prepared to present it concretely and definitely. I do not know whether they are or not. But before it comes to the presentation of the suggestions from the railway commissions of this country, it is a very safe statement that three-fourths of the commissions here represented will not be there. Now the committee that you appoint, whomsoever the President may select, certainly should canvass the situation thoroughly, and if they go before the committee week after next with any proposition, it will have the weight of that committee back of it. But can you not see with me that interested organizations are going to submit propositions with the moral support and backing of those organizations? Would it not add weight if we could suggest to them a few propositions upon which at least a majority of the commissions here agreed, without binding the other commissions at all?

By common consent I desire to add the expression "or review" after the word "appeal", so that the resolution will read "appeal or review".

It has been suggested that the examiners to-day hear cases, and that that might be a better system to continue. With all due respect to Judge Thompson's view—

Mr. THOMPSON, of Illinois: I did not suggest that as a better thing. I said it is one of the things that is under consideration.

Mr. THORNE, of Iowa: That is the situation today, and that is precisely what we are trying our best to improve. And we are not suggesting something that will consume more time, in our judgment, because in the average case, not of large character like an advanced rate case, but of a few shippers whom you may chance to represent, at the present time you appear before an examiner whose tenure of office is not certain. He may leave the commission next week or next month. You are trying a case, not before a man on a parity with a commissioner. Many of these examiners are competent. Some may not be. I make no personal reference to the examiners whatever, as to their personal ability; but any man who has tried a case before an examiner I believe will agree with me that he would be better satisfied if he could argue the case before the examiner, if the examiner could occupy a position given by a substantial

tenure of office, like a commissioner, and if before the examiner reaches his conclusion he could hear your argument. Even though it is precisely the same man, it would be a far better situation. As it is to-day, you present your evidence before the examiner, and the examiner reports his findings. You have not had your argument before him. He makes the findings before any argument is made before him. Now this situation will be changed if there is a subordinate regional commissioner.

Mr. THOMPSON, of Illinois: May I ask you a question?

Mr. THORNE, of Iowa: Yes.

Mr. THOMPSON of Illinois: What you say now presupposes that it is the examiner who takes the evidence and throws it into the commission, with any recommendations he makes, privately. That does not follow out the practice of the Master in chancery, either in the Federal courts or in the courts of unlimited jurisdiction in the States. There they do argue it before the Master, the Master does make his findings, and reports his conclusions both of fact and law, and exceptions can be had to that report, and a hearing had upon them before the Court. Now that is the Master in Chancery idea that I was referring to, that is held by some.

Mr. THORNE, of Iowa: The desire on my part is not to make the slightest reflection on the examiners, or to suggest that they simply gather up the evidence and throw it over to the Commission, following out Judge Thompson's suggestion. I think the examiner who takes the evidence does analyze it carefully, but at the present time there is not before him the argument that Judge Thompson refers to; and I believe, too, that Judge Thompson would agree with me that he would rather have a hearing and an argument before the lower Federal court, in the vast majority of cases of minor importance, than to have the case heard before a referee and have it referred immediately to the Supreme Court of the United States. The lower Federal courts serve the purpose. The trial is had in Illinois, the argument is had in Illinois.

I guess I am consuming too much time. I have merely tried to state some of the reasons that are, I venture to say, in the minds of nine-tenths of the men in this room who have ever tried cases before the Interstate Commerce Commission in actual practice. I feel that I am justified in saying that the sentiment is adequately crystallized to-day, and the following resolution should be adopted. I will read it now as finally worded:

"We believe that the time of the Interstate Commerce Commission and the time consumed in the disposing of cases would be conserved by the creation of subordinate regional commissions, the right being reserved for appeal or review in proper cases by the Interstate Commerce Commission."

The PRESIDENT: Gentlemen, you have heard the resolution.

Mr. CLARK, of the Interstate Commerce Commission: Mr. President, may I ask a question?

The PRESIDENT: Certainly, Commissioner Clark.

Mr. CLARK, of the Interstate Commerce Commission: I should like to inquire if it is the view of the committee that the concluding sentence of the resolution is intended to reserve to the litigant the right of review.

Mr. THORNE, of Iowa: We say "in proper cases". That is a detail that should be determined by Congress or the Commission. We do not desire to go into that detail.

Mr. CLARK, of the Interstate Commerce Commission: I just wanted to get the thought in your mind.

Mr. BRISTOW, of Kansas: I have been invited very kindly by Mr. Newlands' committee to appear before it, and I expect to do so. Now upon further consideration of this subject I may not agree with this resolution. It is somewhat embarrassing for me to go there and take an antagonistic position if I feel it my duty to do so, against the course which the body to which I belong, of which I am a member, has taken; but if I think the plan proposed here is not a wise one, I will have to do that. I want to make this statement so that I will not be misunderstood. I am free to say that so far as I am concerned it will be embarrassing, but I have done a great many embarrassing things before, and of course I expect to do so again.

I would rather that we had had some general expression that we could all agree upon, and then trust to our representatives to work out the details. I think that would have been very much wiser than the course which the majority of the convention seem disposed to take at this time. I wanted to make this statement so that any course I might take in the future would not be misunderstood.

The PRESIDENT: If there is no desire for further discussion, we are ready for the question. All in favor of the resolution as last read by Commissioner Thorne will please indicate the same by saying "aye", opposed "no." The Chair is in doubt. I think we had better have a rising vote.

On a rising vote there were, ayes 21, noes 15.

The PRESIDENT: The resolution is agreed to. Have the committee any further resolutions to present?

Mr. THORNE, of Iowa: Mr. President, at the request of Mr. Finn I will read the next resolution:

There should be created a separate bureau for the purpose of prosecuting cases before the Interstate Commerce Commission, or the Attorney General should assign to one of his assistants the specific task of appearing before the said Commission on behalf of the public generally in cases involving alleged violations of the Act to regulate commerce, as the Attorney General

and his other assistants appear before the Supreme Court of the United States at the present time. The aforesaid Assistant Attorney General should exercise the functions of a commerce counsel for the United States; he should have a fixed salary and a definite term of office, devoting his entire time to this work; and he should be given adequate facilities for the efficient performance of his said duties. This we believe to be of paramount importance, as it will give efficient representation to the interests of the public generally in cases involving matters of large importance.

This provision does not refer to actions in court for the enforcement or defense of decisions rendered by the said Commission, nor does it contemplate any limitation whatsoever upon other parties appearing on behalf of the public, nor upon the Commission's employment of its own counsel to appear in such cases as it may so direct.

Now, gentlemen, Mr. Finn has requested me to read this, and I will state very briefly the occasion for it, so that you may keep it in mind.

In view of the attitude of Senator Bristow, the committee is going to make a motion that that resolution be referred to the committee on State and Federal Legislation; but it would be well for all of you to consider the wisdom of it, and if you are opposed to it you might report to that new committee, and those who are in favor of it might suggest their position in regard to it. If it is not well received by the Association, the committee should not attempt to suggest it to the Newlands Committee, because your committee certainly cannot be more than representative, and each individual commission can speak for itself.

The PRESIDENT: May I make a suggestion? Will it be satisfactory to those who favor this resolution that their remarks be limited to say five minutes, and if there is any opposition that it be limited to five minutes, and then you may be recognized to make the motion that the matter be referred?

Mr. THORNE, of Iowa: Mr. President, would it not be as well to let the gentlemen state their position to the new committee, whoever that committee may be?

The PRESIDENT: I think that would be even more satisfactory, but the Chair is desirous of yielding to your wishes as to how the thing should be done.

Mr. THOMPSON, of Illinois: I think that suggestion of Mr. Thorne's is the proper one. There are some good things in that resolution. I think it should be referred to the committee.

Mr. THORNE, of Iowa: Gentlemen, some time ago there was an attempt in Congress to deprive the Interstate Commerce Commission of its legal representation in court to enforce its orders, and to put the matter into the hands of the Attorney General. The proposition was bitterly fought, and the fight was eminently justified. This has no reference whatsoever to that issue. Here is this question. It does not refer to any case in court. It does not refer to any attorney who will represent

the Commission before any other tribunal. It refers to cases before the Commission itself, affecting the country generally.

I call your attention to the situation when an advanced rate case is pending. A few States get together and voluntarily make contributions. Kansas here contributed \$5,000, for representation in the Western advanced rate case, and that was not enough to take care of the expenses, and other States decided that it would be wise to have larger contributions, and certain other States contributed as much as \$20,000 altogether. Kansas could only contribute \$6,000. Another State contributed two hundred. It is an absurd method. One State is bearing the burden of another. More than that, if another advanced rate case had immediately followed that advanced rate case, nobody could have contributed anything. Further than that, in the employment of expert help, it is difficult to secure statisticians and accountants for a temporary service. We are compelled to take our own statisticians and accountants out of the regular duties of their commission work. During the next year, before we reconvene, there will probably be an advanced rate case of national proportions if the Adamson law is sustained.

Mr. President, I move that this resolution be referred to the new committee on State and Federal Legislation.

Mr. THOMPSON, of Illinois: I second the motion.

The motion was agreed to.

Mr. THORNE, of Iowa: Mr. President, at Mr. Finn's request I am going to read the remaining resolution. There is only one more upon which we are going to ask a vote. There is another resolution that we are going to ask to refer to the new committee.

Further, we respectfully petition the Interstate Commerce Commission to consider the advisability of the following modification of its rules of practice:

(a) That until such time as the entire commission or such subordinate commissions as may hereafter be created, shall sit and hear the entire evidence in all cases before said commission or commissions, in which a State may be a party, the commission, prior to the entering of a final order, should prepare and publish a tentative order, a copy of which should be served on all parties to the proceedings, and opportunity given by all parties affected by such proposed order, upon reasonable notice, to appear and show cause why such tentative order should not be made final.

The committee simply suggest to the members of the Association the wisdom of that resolution, and it will be turned over to the new committee for such disposition as they may think proper, whether to give it serious consideration or not, as they may decide.

I will now read the concluding resolution, that we would like an expression of opinion upon,



Further, we respectfully petition the Interstate Commerce Commission to consider the advisability of the following modification of its rules of practice:

(b) That the Interstate Commerce Commission should render no decision in any case in which at least one member of the Commission shall not have heard the entire evidence, except where a referee or examiner may be appointed to take the testimony, in which case the said referee or examiner should reduce to printed form his findings of fact in their entirety, and the same should be served upon all interested parties, allowing adequate time for exceptions to be filed before the case is submitted to the Commission.

Mr. President, I move the adoption of the last resolution.

Mr. THOMPSON, of Illinois: I second the motion.

The PRESIDENT: It has been moved and seconded that the resolution just read be adopted. Who desires to be heard in connection with the resolution?

Mr. LITTLE, of North Dakota: Is that intended to cover informal as well as formal cases, or would it apply only to formal cases?

Mr. THORNE, of Iowa: It would not apply on an informal investigation. It has reference to cases tried before the commission. In order to meet that suggestion I will insert the word "contested" before the word "case", so that it will read, "that the Interstate Commerce Commission shall render no decision in any contested case," etc.

Mr. FUNK, of Illinois: I will ask Mr. Thorne whether the last resolution, upon which we are about to vote, provides only for cases in which States are parties. The preceding resolution, upon which you did not ask for a vote, contained that provision.

Mr. THORNE, of Iowa: Yes, but this one does not.

Mr. FUNK, of Illinois: The words "in which a State may be a party" were intentionally omitted from the last resolution?

Mr. THORNE, of Iowa: Yes.

The PRESIDENT: Is there a desire for further discussion? If not the question is on the adoption of the resolution.

The resolution was unanimously agreed to.

The PRESIDENT: Is there anything further from the committee? I am sure that the members of the Convention appreciate the hard work which the members of this Committee on State and Federal Legislation have done upon the difficult subjects that have been assigned them.

Mr. ELMQUIST, of Minnesota: Mr. President, as a conclusion to the several motions that have been presented and disposed of, I move that it be the sense of this Convention that the Committee upon State and Federal Legislation be authorized and directed to appear before the Newlands committee, and to take such action as it deems wise and just in the premises.

The motion was seconded.

The PRESIDENT: You have heard the motion which has been duly seconded. Is there a desire for discussion, or is the Convention ready for action?

The motion was unanimously agreed to.

Mr. ELMQUIST, of Minnesota: Mr. President, I desire to offer one motion. Under the constitution the President is ex officio a member of the executive committee. Without amending the constitution, but realizing the importance of the work that President Thelen has done for the Valuation Committee, and also the work before the Newlands committee, I move that it be the sense of this Convention that the President of this Association be ex officio a member of the Committee upon Valuation, and of the Committee upon State and Federal Legislation.

Mr. THORNE, of Iowa: I second that motion.

The PRESIDENT: I think probably the President had better call some one else to the Chair to put that question.

Mr. ELMQUIST, of Minnesota: Gentlemen, you have heard the motion. Is there any discussion.

SEVERAL MEMBERS: Question, question!

The motion was unanimously agreed to.

The PRESIDENT: Mr. Commissioner Elmquist, a question has arisen with reference to the exact wording of the resolution of authority to the Committee on State and Federal Legislation. May we have that motion read?

Mr. ELMQUIST: I will ask the stenographer to read it.

The stenographer read as follows:

"Mr. ELMQUIST, of Minnesota: Mr. President, as a conclusion to the several motions that have been presented and disposed of, I move that it be the sense of this convention that the Committee upon State and Federal Legislation be authorized and directed to appear before the Newlands committee, and to take such action as it deems wise and just in the premises."

Mr. THORNE, of Iowa: There was one matter that was overlooked. I move that Judge Prentis be invited to appear before the Newlands Committee in person.

Mr. Elmquist and others seconded the motion.

The motion was unanimously agreed to.

## DECISIONS AND ORDERS OF STATE COMMISSIONS.

Mr. ELMQUIST, of Minnesota: Mr. President, the Executive Committee presents the following report:

The publication of decisions and orders of state commissions represented in the membership of this Association being under consideration by the Executive Committee during the present year and by the Committee on Publication of Decisions and Orders of State Commissions; and it appearing to the Executive Committee that the Committee on Publication of such decisions

should be continued in existence for the purpose of promoting, so far as may be, the satisfactory reporting of decisions and orders of the State Commissions, and that this Association should adopt or recommend a method of procedure in respect of the furnishing of such decisions and orders to the publishing company and the duties and action of the Committee on Publication of this Association, the Executive Committee hereby reports the following resolution:

**RESOLVED:**

1. That the Committee on Publication of Decisions and Orders of State Commissions shall consist of three members of the Association, appointed by the President; and the Constitution of this Association is hereby amended accordingly.

2. That each of the State commissions should promptly send by mail to the "Public Utilities Reports Annotated" at Rochester, N. Y., copies of all of its decisions and orders; and that said Commission should indicate those decisions and orders which it deems of sufficient importance to be published in full; and if not essential to be printed in full, the said Commission may indicate by abstract or syllabus an outline of the principles decided in any such decision.

3. That in case of any disagreement between the publisher of said "Public Utilities Reports Annotated" and any of said Commissions as to the publication of any such decision or order, the said Commission should send a copy of the decision or order and a copy of the correspondence in relation thereto to the Chairman of the Committee on Publication of Decisions and Orders, whereupon the Committee should notify the "Public Utilities Reports Annotated" of such submission and ask for such further statement in respect of the matter in dispute as it may desire to submit, and ask for any further statement that said Commission may wish to have considered. Thereupon the Committee on Publication shall, as soon as possible, state to the parties its recommendation upon the matter in dispute.

4. That the Committee on Publication of Decisions and Orders of State Commissions shall make a full report to the next Convention of this Association of such matters in dispute as may be submitted, and report also upon the general subject of the publication of decisions and orders of State Commissions, members of this Association.

CHARLES E. ELMQUIST,  
JOHN G. RICHARDS,  
C. M. CANDLER,  
C. THORNE.

Mr. ELMQUIST, of Minnesota: I move the adoption of this report.

Mr. CLARKE, of Nebraska: I second the motion.

The PRESIDENT: Is there a desire for discussion of this report?

Several Members: Question!

The motion was unanimously agreed to.

The report of the Committee on Publication of Decisions and Orders of State Commissions was filed and is as follows:

## REPORT OF COMMITTEE ON PUBLICATION OF DECISIONS AND ORDERS OF STATE COMMISSIONS.

The Committee on Publication of Decisions and Orders of State Commissions respectfully reports that because of the merger of "Official Public Service Reports" with "Public Utilities Reports, Annotated," and because the authority given this Committee to supervise the publication of the reports was restricted to "Official Public Service Reports," it has been without authority to exercise any supervision as to "Public Utilities Reports, Annotated," since the merger took place.

Upon being informed that the negotiations for the merger of these publications had been concluded, your committee immediately made a special report to the Executive Committee, as acting for and on behalf of the Association between the annual meetings, in order that suitable action might be taken by the Executive Committee to direct the work during the remainder of the year of this Committee's existence, until this annual meeting, if the Executive Committee decided to approve the merger, and authorize the continuance of the official designation. The Executive Committee was fully advised of the situation by this Special Report, a copy of which is appended hereto, but the Executive Committee decided not to take action, but to refer the matter to this Convention for action.

The publishers of "Public Utilities Reports, Annotated" have submitted a statement of the present plan, scope and purpose of those Reports, which were much expanded as the result of its publication experience in 1915. In this statement, the helpful assistance of the Publication Committee, in its supervisory capacity, is appreciated and desired. A copy of the statement is also appended hereto.

At this time, your Committee again calls attention to the necessity for some action by this Association upon the new situation created by the merger of the two reporting publications, if supervision by this Association of the publication of decisions and orders of the State Commissions is to be continued. Either the merged reports, now the only publication of such decisions and orders should be recognized by the Association as the subject of general supervision on behalf of the Association, or the Committee on Publication of Decisions and Orders of State Commissions should be discontinued. The importance of continuing such supervision, in the interest of the Association and in the interest of the individual commissions is manifest. Questions of general policy are bound to arise in the future, and the continuance of full and fair publication of all important rulings and opinions should be assured.

This Committee regrets that "Official Public Service Reports" could not be continued as a separate publication, but the amount of the investment had reached a point where the publishers felt they were not justified, by the prospect of a future increase in the number of subscriptions, in refusing the offer to consolidate the two

publications. This Committee could neither guarantee more subscriptions to Official Public Service Reports, nor could it take over the publication of those reports on behalf of this Association. The merger could not, of course, be as entirely satisfactory to this Committee, since the Association had approved the publication of "Official Public Service Reports," and every effort was made to encourage the continuance of those reports, but it became well demonstrated after extended and persistent effort and the making of very large expenditure in canvassing, that the number of subscriptions was too small to constitute any basis on which to expect that the eventual return would equal the expense.

Your Committee is of the opinion that "Public Utilities Reports, Annotated," as conducted under its present publication policy, should be recognized by the Association as the official publication, as action necessary to authoritative supervision, and that this Committee should be continued in its work of supervision, with membership as appointed by the President of the Association for the ensuing year; and it is so recommended.

MARTIN S. DECKER,  
*Chairman.*

### STATISTICS AND ACCOUNTS.

Mr. ELMQUIST, of Minnesota: The report of the Committee on Statistics and Accounts of Public Utility Companies referred to the Executive Committee the subject of the organization of an association of statisticians and accountants.

The parties have been heard by the committee and the testimony considered.

Under the constitution there are two committees of accountants, one of railroads and the other of public utilities. Each of these committees embraces seven members. Your Executive Committee does not feel that it is necessary at this time for the accountants and statisticians to organize a separate association independent of the National Association of Railroad Commissioners. We feel, however, that it would be proper to have both these committees made up of the statisticians and accountants of the several commissions, but that the chairman of each of those committees should be a commissioner. Therefore, Mr. President, we recommend that in appointing the Committee on Statistics and Accounts of Railroads and the Committee on Statistics and Accounts of Public Utilities you appoint the chairman of each of those committees from commissioners of the States, and that the other members of the committee embrace the statisticians and accountants of the several commissions.

The PRESIDENT: The Chair will say that he cheerfully com-

plies with the suggestion, not to say the orders, of the Executive Committee.

Mr. CONNOLLY: I will ask the Chairman of the Executive Committee if he wishes that confined to the States, or does he mean the States and the Interstate Commerce Commission?

Mr. ELMQUIST, of Minnesota: I accept the suggestion—and the Interstate Commerce Commission.

There is just one other matter that I wish to bring to the attention of this Association. When the report of the Committee on Valuation was submitted, nothing was said about the question of finances. I wish to summarize in just about one minute the amount of money that we have received and expended, and to point out the necessity for real support from the States.

We have received in cash and by warrants for services a total amount of \$7,476. The unpaid subscriptions which are expected to be good, amount to \$2,167.37, making a total of \$9,500. We have expended to date \$5,028.57. There are some outstanding accounts which must be paid. Upon the 1st of January of this year we will have a balance of \$1,421.23 for the next year's work.

It is necessary, gentlemen, for us to enlarge that bureau. It is not fair to the solicitor whom we have employed, or to the work which he represents, that he should be both the solicitor and a detail man. We should have an additional stenographer, and we should have a competent engineer at least, to assist him, and therefore I point out to all of you the urgency of continuing your subscriptions to this bureau, and I present this also to the commissions which have not yet been able to assist us in this work, asking them that they take it up immediately upon their return home, and determine some method by which they can add to the financial support of this work. I believe it is one of the most important things that is now before the country, and which should have the active and the financial support of the many commissions in this country.

#### CAPITALIZATION AND INTERCORPORATE RELATIONS.

The PRESIDENT: Gentlemen, at the time when these special orders came up we had before us as unfinished business the report of the Committee on Capitalization and Intercorporate Relations. A motion was made to adopt the recommendations contained in that report. There was, however, no second to that motion. If there is any one who will second the motion, it will give Mr. Edgerton a chance to express his views, if any, as to what should be done with report.

Mr. CLARKE, of Nebraska: As a courtesy I second the motion.

Mr. FINN, of Kentucky: I second the motion also.

The PRESIDENT: With two such seconds, the motion is certainly well seconded. There was also a motion by Commissioner Mills of Minnesota thanking the committee for the hard work which it has done, and moving that the report be filed and printed. Is there a second to that motion?

Mr. GUIHER, of Iowa: I second the motion.

The PRESIDENT: The motion of Commissioner Mills is before the Convention for discussion, and the Chair recognizes Mr. Edgerton.

Mr. EDGERTON, of California: Mr. President, from the second of Commissioner Finn may I assume that I have at least one supporter, or is it only seconded to get it before the House?

Mr. FINN: As a very interested listener, that is all.

Mr. EDGERTON, of California: Gentlemen, I am here prepared to defend the report, prepared to discuss it, or prepared to have it quietly embodied, not to say buried in the proceedings of the convention.

I realize that the report somewhat boldly attacks many subjects which might be considered to be loaded. My experience with dynamite is that except the fellow who produces it and encases it in a receptacle, nobody wants to finger it or approach it. From the aspect of the Association so far with regard to this report I feel that there is an atmosphere of dynamite about it. I want to assure you, however, that after it is quietly put to rest, and perhaps the fuse thus taken out of it, when you can get alone by yourselves and nobody will see you reading it, you will find much matter of interest in it. (Laughter.) I hope that each of you will feel that you can thus read it in private without being utterly publicly condemned. I want to say on behalf of the committee that the main purpose and perhaps the only purpose was to present matters which sooner or later must be seriously considered by each commission acting in an official capacity. These matters are coming up. They are bound to be considered, and if we have succeeded in laying before you matters for your consideration which will cause you to think about them, I shall feel that the committee has accomplished its purpose.

I want to say further that not a single member of the committee that I know of has any propaganda, has any particular personal recommendation to be adopted or assumed by the Association. Whether you thank us or cuss us, I want you to feel that we have tried to be of service. If you feel that we have been of some service, if nothing more, we are quite thankful.

The PRESIDENT: The question before the Convention is on the

adoption of the motion of Commissioner Mills of Minnesota that the committee be thanked for its work and the report be filed and printed. If there is no desire for further discussion the Chair will put the question.

The motion was unanimously agreed to.

The PRESIDENT: Commissioner Edgerton, there is one recommendation in that report to which I am sure the members desire to give some further consideration. You recommend the appointment of a special committee to take up a particular subject referred to in the report, and the Chair recognizes you to go into that matter if you desire so to do.

Mr. EDGERTON, of California: Yes, that recommendation reads as follows: It is numbered 10:

"That a new committee be appointed by this Association to study the question of the relationship between the government and the railroads, to consider the possibilities of co-operation between the government and the railroads, and to report to this Association at its next annual meeting."

It has been suggested that perhaps a committee with a more limited subject might be wise. If I may make just a remark or two preliminary to making the motion, I believe this Association should study, through a committee, the whole question of public ownership as contrasted with private ownership of public utilities; not so much with a view to the committee making specific, definite recommendations that this association should adopt, but that it should labor to lay before the members of this Association the best thought on the subject now available, the greatest experience had by communities in this country and abroad, so that each member of the Association may have available in an intelligible form, for his study, the best there is on this subject. I feel that this Association ought, in justice to itself, to make a study of that great question, which more and more is coming before the public. Frankly, I believe that a year is not too much time in which to do it. I further believe that the Newlands Committee is not going to settle that great question by the first of the coming year. I believe it will still be subject to much controversy and thought at the time when this association meets again.

Therefore, Mr. President, I move that a special committee of seven members be appointed by the President of this Association to consider and report at the next annual meeting on the question of public ownership and operation of public utilities, as contrasted with private ownership of public utilities.

The PRESIDENT: Would you make the motion so broad as to include all public utilities?

Mr. EDGERTON, of California: I do, Mr. President, with this in mind, that if it is confined, for instance, to railroads, it may



not be possible for that committee to lay before the Association the experience of communities in the ownership of other utilities which may be of value in considering the question of the public ownership of railroads. In other words, my suggestion is that the committee be given a reasonable amount of freedom in their investigations of the public ownership and operation of utilities.

The PRESIDENT: If this motion is carried, will you feel very badly if the new President of the Association appoints on that committee men of the most conflicting views on that question?

Mr. EDGERTON, of California: On the contrary, I shall be tickled to death. (Laughter.) My whole career has been one of battle, and it is sufficient to say that I come from California, to convince you.

The motion was seconded.

The PRESIDENT: Mr. Commissioner Edgerton, I understood you, and I would like to have your views on this question, that it is not necessarily your idea that this committee shall come here a year from now with definite recommendations as to whether public ownership is or is not a good thing, but that your view is that this committee shall study the facts, and a year from now shall report, making what may be called a progress report on facts, and if we are not ready to settle the question at that time, possibly the committee might go on further and collect further facts.

Mr. EDGERTON, of California: Yes, that is a very fair statement. Of course it should be understood that the committee ought not to be absolutely muffled in their expressions of opinion.

Mr. YATES, of Illinois: Muffled, or muzzled?

Mr. EDGERTON, of California: In fact, the possessors of conflicting ideas may want to express them.

The PRESIDENT: Gentlemen of the convention, you have heard the question. Is there any further discussion?

The motion was unanimously agreed to.

### DEPARTMENTAL OR SECTIONAL PROGRAMS.

Mr. TAYLOR, of Nebraska: Mr. President, are there any other special orders?

The PRESIDENT: There are no further special orders. There are a number of committees still to report, but if you have any matter we will be glad to have you present it.

Mr. TAYLOR, of Nebraska: If it is not too wide a departure from the traditions of the Association, I would like to offer a resolution.

The PRESIDENT: You are recognized for that purpose.

Mr. TAYLOR, of Nebraska: I would like to offer it now as following Commissioner Edgerton's motion, because it is in some degree related:

Resolved, that the Executive Committee be instructed to give consideration to the advisability of setting aside one day at the next meeting of this Association for the purpose of more detailed treatment and discussion of certain matters with particular reference to the consideration of problems relating to the regulation of public utilities as distinguished from railroads, and that to that end departmental or sectional programs be developed, to be conducted simultaneously during the day assigned for this purpose.

This resolution is an attempt to crystallize some sentiment that I have found among the members for a little more detailed consideration of practical matters in which many of the Commissioners are interested. I am hopeful that it may be adopted, and that the Executive Committee may find it possible to make it effective at our next meeting. There is no intention to deprive this Association of a discussion of the great fundamental questions in which we are all interested, but the resolution leaves it to the discretion of the Executive Committee.

I move the adoption of this resolution.

Mr. ELMQUIST: I second the motion.

Mr. SHAW, of Illinois: Mr. President, I do not know whether what I have to say has a bearing particularly on the resolution. The suggestion I have in mind is one that I have already mentioned to one member of the Executive Committee, which is that as these reports are submitted more or less in the form of papers, it might be wise to have them submitted sixty or ninety days in advance, and that it might be wise for the Executive Committee or the Chairman to designate certain members of this Association to present a written discussion upon these reports. In other words, what I have in mind is a practice which is followed very generally in our engineering societies, where the papers presented are sent out to persons designated or appointed to present to the society written discussions of those papers. I believe I may assume that the primary reason for having reports which are somewhat in the form of papers is for enlightenment, and the knowledge that we may gain from coming in contact with them. The written discussions might bring information to various members who are seeking certain information on lines that would not be brought out in oral discussion at the association meeting, and I take it that the written discussion would not in any way conflict with the oral discussions, on any report or paper that may be presented here.

The PRESIDENT: I assume that the new Executive Committee will be very glad to give consideration to your suggestion.

The question is on the resolution presented by Commissioner Taylor of Nebraska.

The resolution was unanimously agreed to.

The PRESIDENT: The matter is referred to the Executive Committee.

### TIME AND PLACE OF NEXT ANNUAL MEETING.

Mr. NILES, of New Hampshire: Is this an appropriate time for submitting the report of the Committee on Time and Place for holding the next Annual Meeting?

The PRESIDENT: One great mind and one small mind move along the same lines. That was the very thing for which the President was about to call. In order that there may be no doubt about it, yours is the great mind. (Laughter.)

Mr. NILES, of New Hampshire: I was going to say that I did not know whether to feel flattered or otherwise.

The Committee on Holding the next Annual Convention recommends the adoption of the following resolution:

Resolved, That the next annual convention of this Association meet at Washington, D. C. on Tuesday, October 16, 1917, at 10 o'clock in the forenoon.

I move the acceptance of the report and the adoption of the resolution.

Mr. TAYLOR, of Nebraska: I second the motion.

Mr. FINN, of Kentucky: Gentlemen of the Convention, the Mayor of the City of Louisville, the Publicity League of the City of Louisville, the owner of the greatest hotel in the nation, who resides in the City of Louisville, the owners and manufacturers of a peculiar kind of liquid that sometimes comes from Kentucky, all join in extending to this Association an invitation to have its next meeting in the City of Louisville, Kentucky. We will give to this convention proper publicity of its proceedings through our daily newspapers in the city of Louisville, the Courier Journal, the Herald, the Post and the Times. We are sincere in asking this convention to come to Louisville, and we believe that we can make your stay there both pleasant and profitable. So, on behalf of Kentucky and the City of Louisville, I extend to this Convention an invitation to come and visit us at your next annual meeting. (Applause.)

Mr. JACOBSON, of Minnesota: Mr. President, I rise not to make a speech, but I think it is proper to second the nomination of Louisville for our next annual convention.

There are several reasons for our going to Louisville. The main reason, of course, is that this invitation comes from our friend, Mr. Finn, a very valuable member of this convention. The second is that when we were in San Francisco last year

the newspapers of that city gave us a splendid publicity. When we read the newspapers of Washington, D. C., we read very little about the work of this Convention. Being connected with a newspaper myself, I believe in publicity. Some of the States have been very efficient in having newspaper men at this Convention. Minnesota is one of them. We have here the correspondent of one of the large daily papers in our State, Mr. McMurchy, of the Minneapolis News, who has been present at every session, and has sent to his paper daily accounts of the work that has been going on here. I understand there are other States that have had correspondents here. Therefore I am glad to have the opportunity to second the nomination of Louisville for the annual convention next year.

Mr. AYLESWORTH, of Colorado: Mr. President I dislike to make the same statement that I made last year at San Francisco, but I believe Washington, D. C. is the place for this body to meet. We have been extended the courtesy of the hearing room of the Interstate Commerce Commission. We can meet with them and have them with us here. We all have our duties to perform in Washington when we come here, and I personally feel that Washington is the proper place for us to come for our convention.

Of course I realize that Denver is an ideally located city for the convention. Representing the outgoing Governor, I invite you to Denver. Mr. Bradley, my colleague, representing the incoming Governor, invites you. In fact, I know we can show you publicity and a good time; but nevertheless, as we leave to-night for Denver, by way of New York, we shall be glad that we came to Washington, and I feel that this is the proper place for us to come.

Mr. MEYER, of the Interstate Commerce Commission: Mr. President, may I be permitted to remind you that the invitation of the Interstate Commerce Commission is a standing invitation; and I should be derelict in my duty if I did not again invite you to return to Washington. (Applause.)

Mr. DUNCAN, of Indiana: Mr. President, I just want to call attention to the provincialism of the gentleman from Kentucky

(Mr. Finn) when he refers to the best hotel in the United States at Louisville.

The PRESIDENT: Am I correct in my hearing of what he said? I understood he referred to the "owner of the best hotel."

Mr. DUNCAN, of Indiana: That demonstrates clearly that he has never been at French Lick.

Mr. NILES, of New Hampshire: Mr. President, Mr. Finn's invitation was not presented to the Committee on Time and Place. It was not considered by them. I will say for the benefit of the

Convention that there were numerous other invitations, from St. Louis, Chicago, Columbus, the Grand Canyon, New Orleans, Charleston, Buffalo, with Niagara Falls on the side, and the City of New York. Representatives of several of those places appeared before us, and presented the desirability of their particular locations.

The only reason for setting the meeting place of Convention at Washington was the reason which actuated the Convention last year in deciding to come back here; that the members of all the commissions have so much work to do here. All of them find something to do. The valuation will have progressed next year to the point where a good many commissions will be feeling the pinch, and will want to be getting ready for the presentation of their cases, and here is the place to do it. It is altogether probable that the Joint Congressional Committee will still be on its job a year from now. For ever so many reasons it seemed to the Committee that for a steady diet Washington is the place. I should be delighted to go to Louisville, or to Niagara Falls, either. I like the water at the Falls, and while I do not like the special product of Kentucky referred to by Commissioner Finn, there is no objection to my friends enjoying it.

The PRESIDENT: We have before us a resolution offered and seconded, and an invitation which has not been put in the form of a substitute. Do you desire to offer Louisville as a substitute, Mr. Commissioner Finn?

Mr. FINN, of Kentucky: Yes.

The PRESIDENT: Is there any one who seconds the motion to substitute the City of Louisville for the City of Washington?

Mr. JACOBSON, of Minnesota: I second the motion.

The PRESIDENT: Are you ready for the question? The question is on the substitute. All in favor of Louisville will signify it by saying aye, those opposed no. The Chair, as usual, is in doubt.

By a rising vote, the substitute was rejected, ayes 12, noes 18.

The PRESIDENT: The substitute is lost. The question is on the motion originally presented, naming Washington as the place for holding the next meeting.

The motion was agreed to.

### COMPLIMENTARY RESOLUTIONS.

The PRESIDENT: We have one further Committee, on Complimentary Resolutions. Is that committee ready to report?

Mr. KINKEL, of Kansas: Mr. President, in these annual conventions we consider questions of prime importance. As a matter of fact, the proceedings of these conventions depict the best thought of the times affecting the regulation of common carriers and public utilities, and there will be found in them a complete

historical record of the growth and progress made in the questions involved. The proceedings of this year will show a comprehensive study of the questions considered by this Convention, and will compare favorably with any preceding convention. Your committee are of the opinion that much credit for this result is due to the officers of the Association and its committees, and therefore we submit for your consideration the following resolution:

Resolved, That this Convention formally extends its expression of high appreciation to its officers and committees for the very fine program and discussions of the topics provided for its consideration during this Convention.

Be it further resolved, That it expressly extends its thanks to the Committee on Valuation and the solicitor selected by it, Mr. Clyde B. Aitchison, for the effective work performed in the interest of all the members of the Association, and also that it expresses its approval of the comprehensive and instructive report rendered by it, which is an illuminating document on the question of the valuation of the property of common carriers.

Be it further resolved, That we extend to the Interstate Commerce Commission our high appreciation of the favor in permitting the use of its hearing room for our sessions, and also the attendance upon our regular sessions by the individual members of that Commission.

I move the adoption of these resolutions.

Mr. JACKSON, of Wisconsin: I second the motion.

The resolutions were unanimously agreed to.

## STATISTICS AND ACCOUNTS OF RAILROAD COMPANIES.

Mr. POWELL, of Nebraska: As a member of the Committee on Statistics and Accounts of Railroad Companies, I should like to present two resolutions which I think will explain themselves, if I may have the privilege of reading them. The first resolution is as follows:

Be it resolved, That the Interstate Commerce Commission be requested to include in future annual report forms of steam railroads for the use of State Commissions, pages that will provide for a classification of operating expenses subdivided between freight, passenger, and common expenditures, substantially in the same form as provided in the interstate report form for the year ending June 30, 1916.

I move the adoption of the resolution.

The resolution was seconded.

The PRESIDENT: I believe the constitution provides that resolutions presented on the floor of the Convention shall be referred either to the Executive Committee, or to the particular committee to which the resolution would naturally go.

Mr. POWELL, of Nebraska: If it was made in the form a motion, it would be satisfactory to me.

Mr. ELMQUIST, of Minnesota: It is true that motions out of the regular order should be referred to the Executive Committee, but I believe the Executive Committee are willing to waive that part of the constitution and to permit the consideration of this resolution at this time.

Mr. MEYER, of the Interstate Commerce Commission: May I suggest that if there are any formal difficulties here, if this resolution expresses the wish of the Association, the Interstate Commerce Commission will be very glad to comply.

The PRESIDENT: The constitution having been smashed, and the Interstate Commerce Commission having committed itself in advance to whatever may be suggested, and the resolution having been seconded, is there any discussion?

The resolution was unanimously agreed to.

Mr. POWELL, of Nebraska: With your permission, Mr. President, I will read the other resolution.

Be it resolved, That if the Interstate Commerce Commission changes the accounting year for steam railroads to December 31st instead of June 30th, that it be the sense of this Association that as many of the States as possess the necessary authority of law shall call for an annual report from the steam roads operating in their respective States for the calendar year 1916, and thereafter ask their legislatures to change the now existing statutes, if necessary, so that the annual reports of steam railroads may be made for the calendar year instead of for the fiscal year; this in order that there may be uniformity in the annual reports as between the different States and the Interstate Commerce Commission.

I move the adoption of the resolution.

Mr. ELMQUIST, of Minnesota: I second the resolution.

The PRESIDENT: Is there any discussion?

Mr. SHAW, of Illinois: As a matter of information, is not that subject-matter covered in the report that has already been adopted by the Convention, on the first day of the session?

Mr. POWELL, of Nebraska: As to certain matters, yes, but you will notice that it says, "if the Interstate Commerce Commission changes the accounting year." In the other it was a question, as though it was not going to be changed. On Monday of this week the Interstate Commerce Commission had a hearing at which this matter was submitted to them, and I am reliably informed that it will be considered speedily, and that the change will probably be made to the calendar year. I know it is of great advantage to the States to have these figures in a comparative way, and I also know that the railroads are willing to make a calendar year report, and I think it would be of a great deal of advantage to the States to get the matter going as soon as possible.

Mr. SHAW, of Illinois: On the part of Illinois there will certainly be no objection to anticipating such action. We have already taken proper action by our commission to conform to that resolution.

The PRESIDENT: Is there desire for discussion? If not the question is on the resolution.

The resolution was unanimously agreed to.

## MEMBERSHIP OF COMMITTEES.

The PRESIDENT: Is there anything further that any member desires to present?

Gentlemen, I would like to say a word on the question of committees.

The success of this Association depends more on the work that is done by committees than on any other single fact. The President has power to appoint all these committees. The man who will be president after the adjournment of this convention is not acquainted with commissioners from all over the country, although he has done his best to become acquainted, and to learn with reference to the qualifications of commissioners who are not able to be in attendance upon this meeting. So that my first suggestion is that the Chair will welcome either oral or written communications making your suggestions as to the committees on which you would like to do work, and with reference also to your fellow commissioners.

The second suggestion which I should like to make is this: In years past there has been some little confusion, due to the fact that some of the committees have not found themselves able to report until just a few days before the convention met, and some of them not until the convention was actually meeting. I think we all agree that the business of the convention could be done far more effectively, and I think more wisely, if all the members were able to read the reports of all the committees before coming to the place of the annual convention. I think I shall ask the chairmen of the new committees if they will not be so good as to get their reports ready sixty instead of thirty days prior to the next meeting of the convention, so that the secretary will be able to send out the reports to all the commissions. If that is done, it is possible that we might not find it necessary to devote so much time to the reading of reports having read them all, but we might be able to devote more time profitably to the discussion of them.

With reference to the appointment of the committees for the following year, it has been my hope to be able, in case we went on this afternoon, to announce the appointment of at least four committees, they being committees that ought to go to work right away. I do hope, either this afternoon or to-morrow, after consulting with others who share my responsibility, to be able to announce the appointment of the Executive Committee, the Committee on State and Federal Legislation, and the Valuation Committee.



One committee I am able to announce at the present time; and I want to say that I think a great deal of credit is due to the individuals who, finding that there was no report from this particular committee this year, have nevertheless undertaken to do the work that ought to be done. I refer to the Committee on Car Service and Demurrage. I think the spirit which these five men have shown is a splendid thing, and that that is the sort of spirit that makes an association like this valuable.

On the Committee on Car Service and Demurrage the following seven members will be appointed: Commissioner Funk of Illinois, Chairman, and Commissioners Aylesworth of Colorado, Taylor of Nebraska, Jacobson of Minnesota, Lewis of Washington, Dunn of Florida, and Higgins of Connecticut.

I understand it is desired by this committee to meet to-day with the members of the Interstate Commerce Commission, and for that reason the appointment is made at this time.

Is there any further business to come before the Convention?

Mr. FUNK, of Illinois: In connection with the remarks of the President, I would like to call a meeting of the Committee on Car Service and Demurrage immediately after the adjournment of this session, and I have arranged for a meeting with some of the members of the Interstate Commerce Commission, to present to them some matters of mutual interest.

### ADJOURNMENT.

The PRESIDENT: Is there anything further to come before the Convention? I think we have made record time this morning. I do not think anybody dreamed that we would finish before this evening.

If there is nothing further, a motion to adjourn will be in order.

Mr. THOMPSON: I move that this convention adjourn sine die.

Mr. STUTSMAN, of North Dakota: I second the motion.

The motion was agreed to.

Whereupon, at 12:41 p. m., on the 17th day of November, 1916, the Convention adjourned sine die.

**CONSTITUTION**  
**OF THE**  
**NATIONAL ASSOCIATION OF RAILWAY COM-**  
**MISSIONERS, ADOPTED AT SAN FRANCISCO,**  
**CAL., JUNE 7, 1901.**

(As amended October 8, 1907, October 7 and 8, 1908, November 19, 1909,  
 November 17, 1910, November 21, 1912, October 28 and 29, 1913,  
 October 15, 1915, and November 17, 1916)

**I.—NAME.**

The name of this association shall be "The National Association of Railway Commissioners," and its object the discussion of subjects pertaining to the operation and supervision of railway companies and other public service corporations.

**II.—MEMBERSHIP.**

Active membership shall embrace only the Interstate Commerce Commissioners, the railway and public utility commissioners, or deputy commissioners of the several States and Territories and, in those States and Territories having no railway or public utility commission, State officers who by law exercise regulatory powers over the affairs of railways and other public utilities; and the members of the Board of Railway Commissioners of Canada; also the secretary and the assistant secretary of the Interstate Commerce Commission; the secretary of the association; and the secretary and the assistant secretary or clerk or chief clerk, if there are more than one, of each state railway or public utility commission and the Board of Railway Commissioners of Canada, where such office is created by law.

Honorary membership shall include former members of the Association, a committee of three from each national steam railway, electric railway, gas, electric, water, telephone and telegraph accounting association, the statistician of the Interstate Commerce Commission, and of the several State commissions, together with the regular counsel, the regularly employed rate experts, not more than one for each commission, and the regularly employed engineers of said commissions, not more than one for each commission.

Active members shall be entitled to one vote each, if present, upon all questions coming before the Association. Honorary members shall have the privileges of the floor and the right of debate, but shall not be entitled to vote.

**III.—OFFICERS.**

The officers of the association shall consist of a president, two vice-presidents, a secretary, and an assistant secretary, who shall discharge the duties ordinarily devolving upon such officers in similar associations. All of such officers (except the secretary) shall be elected from the active members of the association by ballot, upon nomination upon the floor of the convention, and shall hold office from the close of that annual session at which they are elected until the close of the next annual session and until their successors are chosen. If an officer (except the secretary) becomes disqualified for active membership during his term of office, he shall thereby lose the right to vote.

**IV.—COMMITTEES.**

The following shall be the standing committees of the association, consisting of seven members each, except the Committee on Publication of Decisions, which should consist of three members only, to be appointed from its members by the president, the member first named for each committee to act as chairman.

1. An executive committee, of which the president and the secretary shall be *ex officio* members. This committee shall have general charge of the arrangements governing the holding of the several meetings of the Association, and the conduct of business of these meetings. The first order of business after the formal opening of a convention shall be the report of this committee. The report of this committee and of all other committees shall be filed with the Secretary for printing and distribution at least 30 days before holding the several conventions.

#### STEAM RAILROAD COMMITTEES.

2. Express and Other Contract Carriers by Rail.
3. Safety of Railroad Operation.
4. Railroad Service, Accommodations and Claims.
5. Grade Crossings and Trespassing on Railroads.
6. Railroad Rates.
7. Statistics and Accounts of Railroad Companies.
8. Car Service and Demurrage.

#### OTHER PUBLIC UTILITIES.

(ELECTRIC RAILWAY, TELEPHONE, TELEGRAPH, GAS ELECTRIC AND WATER COMPANIES AND OTHER UTILITIES.)

9. Public Utility Rates.
10. Service of Public Utility Companies.
11. Safety of Operation of Public Utility Companies.
12. Statistics and Accounts of Public Utility Companies.

#### GENERAL.

13. Valuation.
14. Capitalization and Intercompany Relations.
15. State and Federal Legislation.
16. Publication of Commissions' Decisions.
17. Special Committees authorized by Convention or Executive Committee.

#### V.—ANNUAL MEETING.

One meeting of the association shall be held each year. The time and place of each meeting shall be designated by the preceding convention, but in case of failure to so designate the executive committee shall call the meeting.

In case of exigency the executive committee shall have authority to take a vote of the members of the association by mail upon the question of changing the previously fixed time, and if necessary the place of holding the annual convention of the association, and thereupon the committee shall issue a circular notifying the members of the result and any change thereby ordered. In taking any such vote the executive committee shall present a proper date, or place, or both, if necessary, and the question shall be whether or not the time or place or both shall be so changed.

#### VI.—AMENDMENTS.

This constitution may be amended at any annual convention by a majority vote of the active members present, provided that such amendment has been submitted in writing to the secretary of the association and by him sent to each commission represented in the membership at least two months previous to the meeting of such annual convention. If no notice of the proposed amendment has been given as above, it shall require a two-thirds' vote for its adoption.

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## ERRATA.

The name of O. O. Calderhead, Rate Expert, Washington, should be added to the membership of the Committee on Statistics and Accounts of Railroad Companies, as printed on page v.

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